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Supreme Court, U.S.
FILED
JUL 7 1987
JOSEPH F. SPANIOL, JR.
CLERK

87-279

No. _____

***

QUESTIONS PRESENTED FOR REVIEW

1. MAY AN EMPLOYER IMMUNIZE ITSELF FROM LIABILITY FOR EMPLOYMENT DISCRIMINATION BY DELEGATING ITS EMPLOYMENT DECISIONS TO A THIRD PARTY THAT ACTS IN A DISCRIMINATORY MANNER AND WHEN THE EMPLOYER ENGAGES IN ACTS OF OMISSION OR COMMISSION WHICH RESULT IN THE THIRD PARTY'S ACTING IN A DISCRIMINATORY MANNER?

2. WAS SUMMARY JUDGMENT ON PLAINTIFF'S TITLE VII CLAIMS AGAINST THE STATE DEFENDANTS APPROPRIATE BASED UPON THE GENUINE ISSUES OF MATERIAL FACT RAISED BY THE PLEADINGS AND MATTERS OF RECORD, AND WAS THE COURT OF APPEALS CORRECT IN AFFIRMING THE DISTRICT COURT DECISION DISMISSING PLAINTIFF'S TITLE VII CLAIMS AGAINST THE STATE DEFENDANTS?

3. WAS SUMMARY JUDGMENT PROPER AS TO THE PLAINTIFF'S ADEA CLAIM AGAINST THE STATE DEFENDANTS?

4. WAS THE COURT'S DISMISSAL OF THE PLAINTIFF'S CONSPIRACY CLAIM PROPER?

5. WAS SUMMARY JUDGMENT APPROPRIATE ON PLAINTIFF'S CLAIM UNTER 42 USC 1983?

6. WAS SUMMARY JUDGMENT ON PLAINTIFF'S CAUSE OF ACTION FOR BREACH OF CONTRACT APPROPRIATE?

7. MAY A COURT IGNORE AND DISMISS A CLAIM FOR RETALIATION WHEN THE CLAIM HAS NOT BEEN ADDRESSED IN A MOVING PARTY'S MOTION FOR SUMMARY JUDGMENT?

PARTIES TO THIS PROCEEDING

The parties to this proceeding are:

Emily Ruth Ballinger, Plaintiff-Appellant

and

NORTH CAROLINA AGRICULTURAL EXTENSION SERVICE; NORTH CAROLINA STATE UNIVERSITY; HUGH L. LINER, CHESTER D. BLACK, PAUL E. DEW and RUSSELL C. KING, Individually and as agents of North Carolina Agricultural Extension Service and North Carolina State University; BRUCE R. POULTON, Individually and as Chancellor of North Carolina State University;

Defendant-Appellees

The following were Defendants to this proceeding when it was commenced, but the Plaintiff and these Defendants have reached a settlement and the Plaintiff has

dismissed her claims as to these parties:

BOARD OF WARREN COUNTY COMMISSIONERS; WARREN COUNTY; W. J. HARRIS, CLYDE R. EDWARDS, WILLIAM T. SKINNER, III, HERBERT C. HARRIS, GEORGE E. SHEARIN, SR., Individually and as Warren County Commissioners; GLENWOOD NEWSOME, Individually and as Agent of Board of Warren County Commissioners.

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Romero v. Union P. Railroad, 615 F2d 1303 (10th Cir. 1980).

CITATIONS OF OPINIONS HERETOFORE RENDERED IN THIS MATTER

This case at its District Court level is not reported. This case at appellate level is reported at 815 F.2d. 1001 (1987)

GROUNDS ON WHICH JURISDICTION OF THE UNITED STATES SUPREME COURT IS SOUGHT

The Judgment which the Plaintiff-appellant-petitioner hereby seeks to have reviewed was decided by the United States Court of Appeals for the Fourth Circuit on April 9, 1987.

It is believed that jurisdiction to review this matter by writ of certiorari is conferred upon the Court by 28 U.S.C. 1254 (1), and Rule 17 of the Rules of the United States Supreme Court in that a federal court of appeals has sanctioned a departure by a lower court of the accepted and usual standard for summary judgment by resolving a genuine dispute of material and relevant facts in favor of the State Defendants, and because the federal court

of appeals has decided an important question of federal law which has not been, but should be settled by the Supreme Court regarding whether or not an employer may immunize himself from liability for employment discrimination by the delegation of its employment decisions to third parties and while surreptiously through acts ot omission and commission virtually guaranteeing that the third party will act in a discriminatory manner. The Court declined to address this issue in Bazemore v. Friday, 478 U.S. ____, 92 L Ed 2d 315, 106 S Ct 3000 (1986) in which a portion of the Defendants in the case at bar were also Defendants (North Carolina Agricultural Extension Service, North Carolina State University) as not having been properly raised.

STATUTES WHICH THIS CASE INVOLVES

This case involves the following statutes:

42 USC 2000e-2(a) (a982) which provides:

> "a. It shall be an unlawful employment practice for an employer--
>
> 1. to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin; or
>
> 2. to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

29 U.S.C. 623 (a) (1982 & Supp. III 1985) which provides:

> "It shall be unlawful for an employer--
>
> 1. to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of

> employment, because of such individual's age;
>
> 2. to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or
>
> 3. to reduce the wage rate of any employee in order to comply with this chapter."

42 U.S.C. 1983 (1982) which provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia".

and 42 U.S.C. 1985 (1982), which is set forth in the Appendix at page 498

STATEMENT OF FACTS RELEVANT TO THE ISSUES PRESENTED FOR REVIEW

This is a sex and age discrimination case originally brought by the Plaintiff against Board of Warren County Commissioners, Warren County, W. J. Harris, Clyde R. Edwards, William T. Skinner, III, Herbert C. Harris, George E. Shearin, Jr., and Glenwood Newsom (County Defendants) and North Carolina Agricultural Extension Service, North Carolina State University, Hugh L. Liner, Chester D. Black, Paul E. Dew, and Bruce R. Poulton (State Defendants) and Russell G. King (a County Defendant and State Defendant) and disposed of at the District Court as to the County Defendants by settlement and voluntary dismissal and as to the State Defendants by Order allowing the State Defendants, Motion for Summary Judgment. The United States Court of Appeals for the Fourth Circuit affirmed the order of the District Court, and it is

from this decision that the Plaintiff asks the United States Supreme Court to issue its writ of certiorari to the end that this case might be reviewed.

Defendant Chester Black is the Director, Defendant Paul E. Dew is the Assistant Director, and Defendant Hugh L. Liner is a District Director of the North Carolina Agricultural Extension Service. Defendant Bruce R. Poulton is the Chancellor of North Carolina State University. Defendant Russell King was selected Warren County Extension Chairman instead of the Plaintiff.

The North Carolina Agricultural Extension Service (Extension Service) is a division of the School of Agricultural and Life Sciences of North Carolina State University (NCSU). It is headed by a Director (Defendant Chester D. Black) who exercises authority over District Extension Chairmen (Defendant Hugh L. Liner is one such District Chairman)

responsible for administering all Extension Service programs within the State's six Extension Service Districts. The District Extension Chairmen supervise the 100 County Extension Chairmen whose duties and responsibilities are set forth at A.pp. 292-312.

The minimum requirements for the selection of county chairman are six years of service with the Extension Service or the equivalent, at least two years of which must have been with the North Carolina Agricultural Extension Service. A Master's Degree is desirable but is not required, but a bachelor's degree is required.

When the system works as designed, upon learning of an impending vacancy, the District Chairman meets with the County Commissioners and reaches a decision as to the desired qualifications of prospective applicants and with respect to the number of applicants the Board will consider.

The Extension Service then makes an announcement of the vacancy. Each applicant meeting the minimum qualifications is interviewed by the District Chairman (Hugh L. Liner), the assistant director for county operations, the associate director (Paul E. Dew), and the director (Chester D. Black) of the Extension Service. These people then decide whom they will recommend to the County Commissioners. The County Commissioners must then approve the applicant or one of the applicants if more than one is recommended. Final approval of the County Extension Chairman rests with the Extension Service.

Prior to the early 1970's, County Extension Service Chairman were the white male with the greatest seniority in the Extension Service within a county. (A.p. 484.)

Statistical data (from 1974 through 1982) produced by the State Defendants in

Attachment 14 to the State's Answers to Plaintiff's Interrogatories (A.pp. 321-343), disclosed:

a. From 1974 through 1982, there were 82 vacancies of County Extension Chairmanship positions.

b. During the period of time from 1974 through 1982, 75 males, 91.4%, were selected County Extension Chairman, and 7 females, 8.6%, were selected County Extension Chairman.

c. During the period of time from 1974 through 1982, there were 21 vacancies in which there were both male and female applicants. Five, or 24 percent, of the female applicants were appointed and 16, or 76 percent, of the males were appointed.

d. During the period from 1974 through 1982, there were 39 vacancies in which there were both applicants under 40 years of age and those age 40 and older. Twenty-five, or 64

percent, of the under age 40 applicants were appointed County Extension chairmen, while only 14, or 36 percent, of the age 40 and older applicants were successful.

Plaintiff is a white female employee of the North Carolina Agricultural Extension Service. Her date of birth is December 3, 1926.

In the Spring of 1979, Plaintiff applied for the position of Warren County Extension Chairman, but was passed over for the position by a less qualified black male. The appointment of the black male came at a very sensitive time. Blacks within the Extension Service had filed a class-action lawsuit in the United States District Court for the Eastern District of North Carolina alleging discrimination against them on the basis of race (Bazemore v. Friday, 478 U.S. _____, 92 L Ed 2d. 315, 106 S Ct 3000 (1986). When Plaintiff was not named the County

Extension Chairman for Warren County in 1979, she expressed her disenchantment with the Director of the Extension Service, and, although she did not file a charge with the Equal Employment Opportunity Commission (EEOC) her disenchantment was well known to her superiors within the Extension Service. (A.pp. 147-148.)

In March of 1982, a vacancy again arose in the position of County Extension Chairman for Warren County. At that time, Plaintiff was an agent with the Extension Service in Warren County and Defendant Russell King, a white male, age 34, was an associate extension agent in Warren County.

By way of comparison, Russell King had been employed by the North Carolina Agricultural Extension Service for two years and eight months. At the time of the Cooper retirement announcement, Russell King was an Associate Agricultural

Extension Agent. In that capacity, his primary responsibility was to provide continuing education and assistance to Warren County Farmers, particularly in crop sciences. Some of his work was performed through advising and assisting the Warren County Young Farmers and Ranchers Club, a club which Russell King was instrumental in organizing. Of the 61 persons whom Russell King could recall as being members of the club in his answers to interrogatories, only 6 were non-white, although Warren County's non-white citizenry comprises 64 percent of the population. Russell King's supervisory experience consisted of supervising the work of a single agricultural technician during a portion of the two years and eight months he had been with the Extension Service. Russell King's work experience prior to his Extension work consisted largely of teaching vocational agriculture courses in high school for

approximately six years. Russell King had a B.S. degree from NCSU in Agricultural Education, and a M.S. degree in Supervision from Longwood College. Russell King had 208 hours of in-service training. Russell King represented that his work in the military service had been administrative. In Answers to Interrogatories it was disclosed that the "Administrative" duties entailed checking prisoners twice daily at a military prison and keeping the files on the prisoners - more clerical in nature than administrative.

As of March, 1982, Plaintiff had worked with the Extension Service for 33 years, 31 of which had been in Warren County, at the time of Mr. Cooper's announcement to retire.

Over the years, Plaintiff had organized numerous community clubs, organized and worked in 4-H clubs, and planned and supervised one of the most

successful programs offered by Extension in Warren County - the Expanded Food and Nutrition Education Program (hereafter "EFNEP"). Under Plaintiff's leadership, the EFNEP program had reached well over 1,000 homemakers and thousands of their family members from its inception in 1969. Over 95 percent of those reached by the EFNEP were non-whites. Plaintiff supervised a staff of four program aides, and she had supervised a staff of four program aides since 1969. She had supervised at least one employee, and generally more, during most of the years she was employed by Extension. Plaintiff had a B.S. Degree in Home Economics (Teacher Training) from the University of North Carolina at Greensboro (formerly Woman's College) and a Masters' Degree in Education from North Carolina State University. Plaintiff had taken post-Masters' Degree courses at NCSU. She had 2,192 hours of in-service training in

a vast array of subject matter ranging from food and nutrition subjects to estate planning.

(For a summary of the relative qualifications of Russell King and Emily Ballinger see A.pp. 187-222, 476-473, 236-243.)

On March 1, 1982, Hugh L. Liner had a staff meeting with the Warren County Extension Staff at which time he announced that there was to be a vacancy in the County Extension Chairmanship position, but that he did not want people to write letters on behalf of candidates, and that he did not want campaigning. (A.pp. 150, 449-451.)

Emily Ballinger spoke with Hugh L. Liner following the meeting and wrote Paul E. Dew a letter on March 9, 1982, expressing her interest in the position.

On March 3, 1982, the Warren County Young Farmers and Ranchers met. Russell King presided over the business meeting.

The purported minutes of the meeting contained an entry that "Members inquired as to the possibility of Russell King being selected as County Extension Chairman. Upon this inquiry, Russell King respectfully "denied (sic) to make any comment at that time." (Emphasis Added by Plaintiff. Affidavit of Donna B. Roope filed by Defendants, A.pp. 367-369.)

Irvin D. Smith was a member of the Warren County Young Farmers' and Ranchers' Association during 1982. Russell King either saw Irvin D. Smith or went to his farm on nine occasions between February 23, 1982, and March 29, 1982. (Russell King Answer to Interrogatory 16(d), A.pp. 365, 366.)

Defendants concede that the State Defendants received three letters in support of King - one from Irvin Smith dated March 4, 1982, one from Richard N. Gupton (a member of the Young Farmers' Organization) dated March 9, 1982, and one

from Steve L. Medlin dated March 10, 1982. (Liner Answer to Interrogatory 8, A.pp. 350, 353-362.)

Either on March 18, 1982, or a few days prior to that time, Mr. James "Jimmy" Harris, a member of the Warren County Young Farmers' and Ranchers" Organization (See Russell King Answer to Interrogatory 8, A.p. 364) contacted Chester D. Black by telephone requesting that Chester D. Black, Paul E. Dew, and Hugh L. Liner meet with Harris and other livestock producers on March 18, 1982 (this date is otherwise incorrectly referred to throughout these proceedings as a March 11, 1982, meeting in Louisburg), in Louisburg which is outside Warren County.

Emily Ballinger knew nothing of the meeting until April 2, 1982, at which time Liner casually mentioned to her in the presence of Russell King that Extension officials had met with a group of Warren County Farmers over in Louisburg over

their concern about a livestock agent, but that Plaintiff should not think that because a lot of activity was going on among the Young Farmers that this affected her chances of getting the County Chairmanship (A.pp. 421-423).

Chester D. Black, Paul E. Dew, and Hugh L. Liner attended the Louisburg meeting on March 18, 1982 (or March 11, 1982). It is noted that these individuals constituted the selection committee for recommending a successor for the County Extension Chairmanship vacancy.

There was acknowledgement by at least some of the Defendants that:

> "There was some discussion about County Extension Chairman that peripherated the meeting somewhat." (A.p. 429.)
> "The three applicants' (Mr. Koonce, Emily Ballinger, and Russell King) names were mentioned at the meeting."

On March 19, 1982, the day following the Louisburg meeting, Hugh L. Liner wrote letters to Irvin Smith, Richard Gupton,

and Steve L. Medlin acknowledging receipt of their letters in support of Russell King and thanking them for their letters. (A.pp. 350, 353-362.)

Following her receipt of a letter advising her to come for an interview and bring five copies of her resume with her, Emily Ballinger was interviewed for the position of County Extension Chairman by Black, Dew, and Liner on March 23, 1982. The opening statement of the interview, made by one of the interviewers, was an observation that the interviewer noticed that Emily Ballinger was approaching retirement age (Emily Ballinger was 55 years old at the time) and that the interviewer wanted to know why she wanted the job with its headaches. (A.p. 153.)

In virtually identical answers to Plaintiff's interrogatories, Black, Dew, and Liner justified their decision to recommend both Russell King and Emily Ballinger on the pretext that since both

met the minimum qualifications, that both should be recommended. That such is mere pretext is suggested by the fact that the third candidate, Koonce, also met the minimum qualifications, and he was not recommended.

On March 30, 1982, Emily Ballinger saw the chairman of the Warren County Commissioners in Raleigh. The Chairman of the Commissioners, W. J. "Jack" Harris, advised the Plaintiff that she would be the County Extension chairman, and that "Russell does not have the experience. " (A.pp. 373-375.)

On March 24, 1982, The Warren Record carried a letter to the Editor from Irvin Smith (A.pp. 164-167) which subtlely encouraged supporters of Russell King to let their support of him be known to the County Commissioners and others, and that the supporters appear at the County Commissioners' meeting to voice their support.

On or about March 30, 1982, a week after the deadline for resumes, a week after the interviews of the candidates, and a week after the State had purportedly made its decision, Russell King, with the approval of Liner, submitted a second resume in support of his candidacy. Plaintiff was not advised of such or given an opportunity to enlarge upon her resume. The second Russell King resume was patterned exactly after and was like the Plaintiff's, although Plaintiff had never shown her resume to Russell King. The second resume substantially enlarged upon the first resume. It was this second resume which was submitted to the County Commissioners by the State Defendants.

L. C. Cooper sent Hugh L. Liner a copy of the letter to the Editor, and Hugh L. Liner had a copy of the letter at least by March 29, 1982, at which time Emily Ballinger expressed her concern to Hugh L. Liner over the letter and her fears that

it was an unfair obstacle in her bid for the County Extension Chairmanship. (A.pp. 168-175.)

From the time of the announced vacancy until it was filled, several residents of the county spoke with Plaintiff and asked to write letters in her behalf and put in a good word for her. Plaintiff advised each that she was under orders from Defendants not to politick, or permit her supporters to politick, and that if they spoke in her behalf or wrote letters, such may be viewed as insubordination on the part of Emily Ballinger. (A.pp. 433-434, 450 - 451.)

Hugh L. Liner assured the Plaintiff that he did not interpret the letter as being related to the County Extension Chairmanship opening. (A.pp. 168-176.)

On Friday, April 2, 1982, Hugh L. Liner met with Plaintiff and Russell King and advised them that he had just talked with Mr. Harris (Defendant W. J. Harris,

Chairman of the Warren County Board of Commissioners), and that the Extension Service was going to recommend both Emily Ballinger and Russell King for the position and let the Commissioners decide. (A.p. 173.)

At this meeting with Liner on April 2, 1982, Emily Ballinger again expressed to Hugh L. Liner her concern over the letter. Hugh L. Liner lightly dismissed her concerns and explained what he purportedly thought the letter meant. (A.pp. 174-175.) Hugh L. Liner admitted that he told Plaintiff that he did not feel the letter would affect the County Commissioners' decision, and that he again reminded her and Russell King that they should not go out and politick for the position and have people appear before the Commissioners in their behalf. (A.pp. 174-175.)

The Warren County Commissioners did not request two applicants', the

Commissioners were surprised when the Extension Service indicated that it would recommend two applicants, and the County Commissioners went along with the decision of the Agricultural Extension Service to consider two applicants. (Testimony of W. J. Harris, Grievance Hearing, A.pp. 395, 402-405.)

The Warren County Commissioners met on April 5, 1982, to decide whom the Commissioners would endorse for the position of County Extension Chairman. The Extension Service was represented at the meeting by Hugh L. Liner who was present during all the discussions regarding the selection of an extension chairman.

The ability of a woman to perform the duties of County Chairman was discussed was conceeded by at least one Commissioner. The Chairman of the County Commissioners also conceeded at the grievance hearing that it was the

consensus of the Board that a man would be better in the County Extension Chairmanship than a woman (A.p. 395), and that he may have told a local citizen following the selection of King that Plaintiff would have been appointed if she were male and that he was aware of the fact that there was strong sentiment in the County for a male County Extension Chairman. (A.p. 403 - 407). The State Defendants concede that Hugh Liner was present during all of the discussion by the County Commissioners, that he was asked if there were other female chairmen and what kind of job they were doing, and that he replied that he thought there were six, and that he felt their average performance was equal to the average performance of male County Chairman in the State.

Within a few minutes following the Commissioners' meeting, Hugh L. Liner gave a prepared news release announcing Russell

King's appointment to W. J. Harris to give to the office of The Warren Record. Although Defendants contend that Liner came to Warrenton on April 5, 1982, with two news releases, one announcing the appointment of Emily Ballinger, and one announcing the appointment of Russell King, the Defendants have never been able to produce the news release purportedly prepared in the event of the selection of Emily Ballinger. (A.pp. 223 - 226, 179.)

Hugh L. Liner then orally advised Emily Ballinger that she had not received the appointment and that Russell King had been selected.

A few days after April 8, 1982, Plaintiff received a letter from Chester D. Black advising her that Russell King had been appointed.

At the time of the selection, the Extension Service had an internal Grievance Procedure which was available to the Plaintiff (A.pp. 457 - 476). The

procedure bears review by the Court.

On September 9, 1982, a hearing on the matter of Plaintiff's grievance was conducted in Warren County, and presided over by the Extension Service's Grievance Coordinator. All parties were represented by counsel, and the Extension Service and NCSU arranged for the proceeding to be recorded. Paul E. Dew, Hugh L. Liner, the Plaintiff, and W. J. "Jack" Harris (Chairman of the Warren County Board of Commissioners) testified at the hearing.

The Grievance Committee retired in private to deliberate following the hearing. (The report of their deliberations, submitted to Chester D. Black, Director of the Extension Service, by J. D. Dodson appears at A.pp. 227 - 228).

The report was not favorable to the Extension Service. By letter dated September 22, 1982, addressed to the members of the Grievance Hearing panel,

Chester D. Black rejected the report and directed the panel to reconvene. (Document 3 attached to Plaintiff's Response to Defendants' First Request for Production of Documents, A.pp. 229 - 230).

The Grievance Committee reconvened and its findings are contained in a letter from J. D. Dodson to Chester D. Black, dated October 19, 1982 (A.pp. 231 - 234).

Chester D. Black rejected the report.

Plaintiff subsequently and within apt time, filed a grievance with the EEOC.

On or about September or October, 1982, Plaintiff was given her annual Performance Review by Russell King, then County Chairman. Her review was the worst she had ever received. Plaintiff protested the review through all appropriate channels, including taking the matter up with Hugh Liner, and her protests were generally ignored (A.pp. 247 - 264).

Plaintiff filed another charge with the EEOC alleging retaliatory action on the part of Defendants in unfairly rating the Plaintiff's performance on her annual review.

On or about December 11, 1982, Plaintiff, by letters to Chester D. Black, NCSU Chancellor Poulton, and Mr. Dodson, appealed Chester D. Black's decision to Doctor Poulton, Chancellor of NCSU.

A few days after January 31, 1983, Plaintiff received a letter from Chancellor Poulton dated January 31, 1983, advising her that he would not disturb the ruling of Chester D. Black.

Plaintiff received letters from the Justice Department granting her the right to sue both the County Defendants and the State Defendants on her original claim and claim of retaliation.

This action was commenced in the United States District Court for the Middle District of North Carolina within

90 days of receipt of the letters granting Plaintiff the right to sue.

After a discovery period, the County Defendants moved for summary judgment as to all of Plaintiff's claims.

The State Defendants moved for summary judgment as to all of the Plaintiff's claims except her claim for retaliation.

By order entered May 22, 1986, the District Court allowed a portion of the County Defendant's Motion for Summary Judgment, and denied a portion. The District Court allowed the State Defendant's Motion for Summary Judgment as to all of the Plaintiff's claims (A.pp. 27 - 67).

The Plaintiff settled her claim against the county (A.pp. 486 - 495) and by Stipulation of Dismissal with prejudice filed on September 8, 1986, concluded her case with the County Defendants. (A.pp. 496 - 498.)

Plaintiff then appealed the court's interlocutory summary judgment order relating to Plaintiff's claims against the state to the United States Court of Appeals for the Fourth Circuit .

By Opinion filed on April 9, 1987, the Court of Appeals affirmed the ruling of the District Court.

ARGUMENT

1. MAY AN EMPLOYER IMMUNIZE ITSELF FROM LIABILITY FOR EMPLOYMENT DISCRIMINATION BY DELEGATING ITS EMPLOYMENT DECISIONS TO A THIRD PARTY THAT ACTS IN A DISCRIMINATORY MANNER AND WHEN THE EMPLOYER ENGAGES IN ACTS OF OMISSION OR COMMISSION WHICH RESULT IN THE THIRD PARTY'S ACTING IN A DISCRIMINATORY MANNER?

The Plaintiff has contended throughout these proceedings that the State Defendants had the final word on who was appointed Warren County Extension Chairman. The Defendants and the lower courts rejected this contention, holding that there was no rejection of the Plaintiff by the State Defendants. Under an interpretation of the facts most favorable to the State Defendants, at the

very least the decision regarding County Extension Chairman appointments was a joint one - one in which the State could not act without the concurrence of the County, or the County without the concurrence of the State.

The basic premise upon which the District Court and the Appeals Court based its decision that summary judgment on Plaintiff's Title VII and ADEA claims was proper and the basis upon which the courts concluded that Plaintiff had failed to make a prima facie showing was that the Plaintiff was not rejected by the State Defendants since they recommended her for the Warren County Extension Chairmanship (A.p. 18). The trial and appellate courts therefore ignored, rejected, and resolved in the State Defendants favor all evidence offered by the Plaintiff of actions and inactions on the part of the State Defendants which were designed to and did undermine the Plaintiff's bid for the

County Extension chairmanship.

The issue of whether an organization in the education business, staffed by highly educated and knowledgeable persons can insulate itself from liability for the discrimination of third parties (local county Boards of Commissioners consisting of farmers, factory workers, and persons who are unknowledgeable of EEOC regulations) with whom it jointly participates in making employment decisions begs to be addressed by the highest court of this country.

If the evidence before the court is taken in light most favorable to the State Defendants, the selection process for a County Extension chairman required the mutual consent of the state and the county. The State Defendants contend that since they consented to the County Defendants' considering the Plaintiff for the position, that the County Defendants' rejection of the Plaintiff on grounds of

sex discrimination may not be imputed to the State Defendants. For the United States Supreme Court to license this thinking by declining to review this case is to say to employers that if they can somehow manage to successfully arrange for a third party to participate in employment decisions which affect the mutual employee of the employer and the third party, that the employer is totally relieved of all responsibility under Title VII. Further, that this is the case even when, as in this case, the Extension Service was fully aware of the impermissible sex based considerations which went into the decision of the County Commissioners.

Hugh L. Liner attended the County Commissioners' meeting at which time the Commissioners made a decision regarding their preference of County Extension chairman. The chairman of the county commissioners testified in the grievance hearing (A.pp. 395, 403 - 404) that gender

was the reason Miss Ballinger did not get the position.

Under the State Defendants' contention of the manner in which County Extension chairman were selected, the decision required the mutual consent of the state and county. It is respectfully submitted that the State Defendants had a duty to withdraw their consent to the rejection of Miss Ballinger by the County when the State Defendants knew, or in the exercise of even ordinary care they should have known, the county half of the selection to be tainted by gender and age discrimination discrimination. Under no interpretation of the procedure could it be concluded that the State Defendants were required to accept the selection of the County Defendants. In fact, under the Memorandum of Understanding to which the State and County Defendants were parties, all appointments are worked out jointly between the Extension Service and the

commissioners and no official action can be taken unilaterally by either party with respect to filling a vacancy. (A.pp. 312 - 320.)

The State Defendants have found themselves a loophole by which they may continue their historic and statistically documented discrimination against females (and blacks). As the District Court's and Fourth Circuit Court of Appeals Decisions now stand, that loophole has been approved by the Courts.

A ruling by the Supreme Court on this issue is important to the Plaintiff, and to all other employees of the State Defendants (and other employees similarly situated) who are subject to gender, race, and age discrimination at the hands of the State Defendants and their scapegoats - the 100 counties in North Carolina.

The Court is urged to pick up where Bazemore v. Friday, supra, left off, and to address this important issue.

The Plaintiff was the most qualified of the applicants for the position of County Extension chairman. The act of the State Defendants' recommending a less qualified 34 year old male along with the Plaintiff when the Plaintiff possessed superior qualifications and when the county had not requested two applicants (the Chairman of the Board of Commissioners was surprised that two names would be submitted to the commissioners; in fact, he had told the Plaintiff on March 30, 1982, that she would be the next County Extension chairman) is evidence of "rejection" even though the state Defendants permitted the county commissioners to consider the Plaintiff for the position.

2. SUMMARY JUDGMENT ON PLAINTIFF'S TITLE VII CLAIMS AGAINST THE STATE DEFENDANTS WAS INAPPROPRIATE BECAUSE GENUINE ISSUES OF MATERIAL FACT WERE RAISED BY THE PLEADINGS AND EVIDENCE BEFORE THE COURT, AND THE COURT OF APPEALS ERRED IN AFFIRMING THE DISTRICT COURT DECISION DISMISSING PLAINTIFF'S TITLE VII CLAIMS AGAINST THE STATE DEFENDANTS.

The trial court correctly concluded that Title VII cases are governed by the following statement of law:

> "The Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), established an order of presentation of proof for use in Title VII cases involving disparate treatment. The Plaintiff has the burden of proving by a preponderance of the evidence a prima facie case of discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. at 802; Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981). Specifically, a Plaintiff must show that the Plaintiff was a member of a protected class who was qualified for an available position but was rejected under circumstances giving rise to an inference of unlawful discrimination. Burdine, 450 U.S. at 253; Cuthbertson v. Bigger Brothers, Inc., 702 F.2d 454, 458 (4th Cir. 1983). The burden of establishing a prima facie case is not an onerous one. Burdine, 450 U.S. at 253."
>
> "Once a Plaintiff establishes a prima facie case, the burden of production shifts to the Defendant to articulate some legitimate, non-discriminatory reason for the employee's rejection, thereby rebutting the presumption of discrimination raised by the Plaintiff's prima facie case. McDonnell Douglas Corp. v. Green, 411 U.S. at 802; Ross, 759 F.2d at 365. The Defendant successfully rebuts

this presumption by producing evidence that the Plaintiff was rejected, or someone else preferred, for a legitimate, non-discriminatory reason. Id. To satisfy this burden, the employer need not persuade the Court that it was actually motivated by the proferred reason -- the employer's explanation must merely be legally sufficient to raise a genuine issue of fact as to whether it has discriminated against the Plaintiff. Like the burden of establishing a prima facie case, this burden of production is not an onerous one."

"Finally, if the employer produces a legitimate, non-discriminatory explanation for the employee's rejection, the employee bears the ultimate burden of proving intentional discrimination by producing evidence that the employer's proferred reasons are pretextual. Burdine, 450 U.S. at 253. This burden of production merges with the ultimate burden of persuading the Court that the employee has been the victim of intentional discrimination. Id. at 256. The employee may satisfy his burden of persuasion either directly by persuading the Court that a discriminatory reason more likely motivated the employer, or indirectly by showing that the employer's proferred explanation is not credible. Id. Because the first two burdens of production in the McDonnell Douglas formula are not difficult to satisfy, Courts often resolve Title VII and ADEA cases on this third ground."
Summary judgment motions are less

likely to be granted in Title VII and ADEA cases given the need to determine the employer's actual motive. Where the nonmoving party on motion for summary judgment would at trial carry the burden of proof, such party is entitled to have the credibility of his evidence as forecast assumed, his version of all that is in dispute accepted, all internal conflicts resolved favorably to him, most favorable of possible alternative inferences from evidence drawn in his behalf and to be given the benefit of all favorable legal theories invoked by evidence so considered. Summary judgment is not appropriate even if there is no dispute as to evidentiary facts but only as to conclusions to be drawn therefrom. Summary judgment is seldom appropriate in cases wherein particular states of mind are decisive as elements of claims. Charbonnages de France v. Smith, 597 F.ed 406, 414 (4th Cir. 1979); Pierce v. Ford

Motor Co., 190 F.2d 91, 9150 (4th Cir. 1951); United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S.Ct. 993, 8 L.Ed.2d 176 (1962); Foster v. Swift & Co., 615 F.2d 701 (5th Cir. 1980).

It is clear that the Court's decision to allow the State Defendants' Motion for Summary Judgment was based in large measure upon the Court's conclusion that since the State Defendants "recommended" the Plaintiff, there could be no "discrimination" on the part of the State Defendants. This position ignores the fact that the evidence gives rise to the presumption that the recommendation was ceremonial, that it was undermined by the State Defendant's acts and omissions, and that the evidence creates the inference that the ultimate decision for "acceptance" or "rejection" was either entirely the State Defendants, or part the State Defendants and the State Defendants "rejected" the Plaintiff. Even if the

final decision were not with the State Defendants as they argued on appeal, under the State Defendants' description of the selection process, the selection required mutual consent, and that consent could presumably be withdrawn by the State Defendants when it became apparent to them or should have become apparent to them that the county's decision was tainted by discrimination. This "rejection" was tangible - not something to be devined from inferences, and it, along with statistical evidence which was totally disregarded by the Court, and other factual evidence established a prima facie case of sex discrimination contrary to the findings of the Court.

Statistical data has been held as sufficient to establish a prima facie showing of discrimination. Hazelwood School District v. United States, 433 US 299, 53 L.Ed 2d 768, 97 S Ct 2736 (1977).

The Court attempted to piecemeal resolve in the State Defendants' favor evidence of various actions on the part of the State Defendants which Plaintiff contended to constitute evidence of discriminatory intent. In so doing, the Court missed the fact that the totality of the occurrences and events left little doubt that the occurrences were motivated by sex and age discrimination.

In Woodworkers v. Plywood, 659 F.2d 1259, the Court was faced with a situation similar to that of the Plaintiff in that Plaintiffs had been victimized by a series of occurrences, any single one of which might have been dismissed as insufficient to establish that Plaintiffs had been the victims of sex and race discrimination, except for the fact that the totality of the occurrences and events left little doubt that the occurrences and events were motivated by sex and race discrimination.

Plaintiff in this case not only offered direct proof of discrimination based on hard cold facts, she also submitted circumstantial proof, and the Courts in this circuit have held circumstantial evidence sufficient. In Holsey v. Armour, 743 F.2d 199 (4th Cir. 1984), the Court found a pattern and practice of discrimination based on circumstantial evidence indicating improper motive. There the Court (at page 209) relied on U.S. Postal Service v. Aikens, 103 S.Ct. 1478 (1983) for the following:

> "To act deliberately, of course, requires intent. But direct evidence of intent is unnecessary. Circumstantial proof suffices ." Id. 1481, n.3.

If an employer, as the State Defendants, initially insulates itself from liability for discrimination of an employee by agreeing that the employee may be considered for a position by a third party which participates in employment

decisions, does the employer continue to be insulated from liability when the employer engages in acts of omission or commission which insure that the employee will not be selected by the third party?

The position of the Plaintiff throughout these proceedings was that the State Defendant's "recommendation" (more accurately, an agreement to permit the county commissioners to consider the Plaintiff for the position) to the Board of Commissioners was merely ceremonial - done with the intent of avoiding liability for discrimination charges the State Defendants believed the Plaintiff would bring, and that the State Defendants engaged in activities which virtually assured that the Plaintiff would not be selected by the Board of Commissioners.

Both the District Court and the Court of Appeals ignored facts favorable to the Plaintiff, and resolved all genuinely disputed material facts in favor of the

State Defendants. In so doing, the courts completely ignored the Supreme Court's clear directives on numerous occasions regarding standards the court must apply in determining whether or not summary judgment is appropriate. This issue was most recently addressed by the Court in Anderson v. Liberty Lobby, Inc., 477 US _____, 91 L Ed 2d 202, 106 S Ct 2505 (1986), in which the court held summary judgment will not lie if the dispute about a material fact is "genuine," and if the evidence is such that a reasonable jury could return a verdict for the non-moving party. The court further held that at the summary judgment stage, the trial judge's function is not to himself weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial. While holding that the clear-and-convincing standard of proof should be taken into account in ruling on summary judgment motions, the

court cautioned that its ruling did not denigrate the role of the jury, that it was not authorizing trial on affidavits, and that credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge. The court reaffirmed the Adickes v S.H. Kress & Co. 398 US 144, 26 L Ed 2d 142, 90 S Ct 1598 (1970) standard that on motion for summary judgment the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.

As applied to this case:

1. Could not a jury reasonably conclude from the evidence of the relative qualifications of the Plaintiff and the 34 year old male recommended to the Board of Commissioners that the Plaintiff was more qualified than the male, and that the State Defendants' refusal to recommend only the Plaintiff was indicative of

discriminatory animos? The question is answered by the grievance panel jury which reasonably concluded on essentially the same evidence before the trial court that:

> "One of the basic reasons for the complaint was that two people were recommended rather than one. The panel recommends that in the future only the most qualified person be recommended to the commissioners." (A.p. 231.)

> "The panel felt that the Extension Administration either knew or had a strong feeling as to who would be selected if both Emily and Russell were recommended to the Commissioners. They felt that the recommendation of Emily was most likely an attempt by the Administration to prevent Emily from filing a grievance or at least to put the blame on the County Commissioners if there was a grievance filed. By recommending both people, the Administration avoided making a choice between the two individuals." (A.p. 232.)

> "There was testimony to the fact that the Chairman of the County Commissioners had led Miss Ballinger to believe that he thought she would be the next County Extension Chairman by comments he made to Miss Ballinger at a meeting in Raleigh that he attended. The

> Chairman of the County Commissioners also testified that he was surprised when Extension recommended two applicants for the position. This testimony plus the fact that George Koonce, who the panel felt met the minimum qualifications, was not recommended, led the panel to wonder if the Administration knew who would be selected and recommended Miss Ballinger to ward off a grievance by her." (A.p. 234.)

2. There was evidence that after the State Defendants decided to recommend both the Plaintiff and Russell King to the County Commissioners that Russell King submitted a new resume (patterned after the Plaintiff's resume, although she had never shown Russell King her resume), and that it was this expanded new resume was submitted by the State Defendants to the county. The evidence lent itself to two interpretations. The Court chose to believe Hugh L. Liner's version and find that there was nothing irregular about an employee's updating his resume. The Grievance panel "jury" having heard Hugh

L. Liner's testimony nevertheless reasonably concluded from the evidence:

> "The fact that Russell King altered his resume and there was no evidence that Miss Ballinger was given an opportunity to update her resume could be interpreted to mean that the Administration had a preference for Mr. King." (A.p. 232.)

3. There was evidence before the Court that the Extension Service personnel who would decide whom to recommend to the county commissioners met outside Warren County with a group of Warren County farmers on March 18, 1982. There was also evidence in the form of the testimony of Hugh Liner that the subject of the County Chairman "somewhat peripherated the meeting" (A.p. 429). If Hugh Liner's testimony is completely ignored by the court, then the court might conclude from this evidence that the Plaintiff has no complaint about the State Defendant's attendance at the meeting. On the other hand, the entirely reasonable conclusion

of the grievance panel "jury" upon hearing the testimony of Hugh Liner and Paul E. Dew was:

> "The Extension Service should have recognized the fact that the meeting in Louisburg with a group of farmers would have been viewed as a pressure group. The panel felt that it may have been better judgment on the Administration's part to have not met with that group during the time that a Chairman was being selected." (A.p. 233.)

4. There was evidence that there was an apparent misconception on the part of some farmers in Warren County that the County Extension Chairman would have to be a man in order for the County to get a livestock agent. There was also evidence in the form of testimony of the chairman of the county commissioners, W. J. "Jack" Harris at the grievance hearing that the County Commissioners, with Hugh Liner in attendance as the Extension Service representative, considered the sex of the Plaintiff as a basis for rejecting her.

There was also evidence from Hugh L. Liner that he was asked during the meeting about the ability of a woman to perform the duties of county chairman. His reply was that there were six female county chairman, and that their average performance was equal to the average performance of males.

In granting summary judgment for the State Defendants, the District Court and Court of Appeals concluded that the only inference to be drawn from this evidence was that the State had nothing to do with the admitted discrimination by the county Defendants, and that the state was justified in doing nothing more to enforce the EEOC protections its employee, Miss Ballinger, allegedly had.

The grievance panel "jury" nevertheless reasonably concluded from virtually the same evidence that was before the District Court that:

"The panel felt that the Warren

> County people thought that the Chairman had to be a man in order for them to have a livestock agent. There was no evidence brought out that indicated that the Administration did anything to point out that this was not necessarily the case." (A.pp. 232 - 233.)
> "The Administration should give some thought as to things that could be done to dispel the conception that a lot of county lay people seem to have that the duties of a County Chairman are such that a man needs to be the County Chairman." (A.p. 2..)

5. There was evidence before the court: That the Extension Service had instructed all of the applicants for the position that they were not to "politick" for the position or have their supporters do so; that the Plaintiff became alarmed over a mounting campaign for the appointment of Russell King and that she expressed her concern to Hugh L. Liner; and that Hugh L. Liner assured her that she should not be concerned and continued the "gag" order as to Miss Ballinger, even though at the time he made the assurances

and continued the "gag" order he had received three letters from supporters of King, (A.pp. 353 - 362) he had attended a meeting in Louisburg at which a discussion regarding the County Chairman "peripherated" the meeting, and he had been provided with a copy of a letter to the Editor of the Warren County newspaper which could be interpreted to be an endorsement for Russell King (A.pp. 432 - 445). There was also evidence that on March 3, 1982, at the Young Farmers' Organization, presided over by Russell King, that members had discussed what could be done to get Russell King to be the next county chairman and that Russell King had "denied" (sic) (A.pp. 367 - 368) to comment.

In allowing the State Defendant's motion for summary judgment the court effectively said that the only reasonable inference to be drawn from this evidence is that the State Defendants had

recommended the Plaintiff to the Commissioners; therefore, any acts of omission or commission were harmless and did not lend themselves to an interpretation that the State Defendants had engaged in any discriminatory act.

A jury could reasonably find from the evidence that the State Defendants gagged the Plaintiff to ensure that she would not be selected, and that this was merely further evidence that the State Defendants' "recommendation" was a sham.

6. There was evidence before the court of a statisically documented pattern of discrimination against women and persons over forty for the position of County Extension Chairman (A.pp. 321 - 343). The District Court ignored the evidence and the Court of Appeals, incredibly, found it not to exist. It is noted that this was the same type of statistical data rejected by the trial court and court of appeals in the Bazemore

case, and evidence which the Supreme Court held the court of appeals to have erred in failing to consider. Bazemore v. Friday, supra.

7. The undisputed evidence was that the State Defendants rejected the findings of its own grievance panel, directed the panel to reconsider its decision, and then rejected the "reconsidered" findings rendered by the panel. The trial and appellate courts disregarded this undisputed evidence, although it was evidence which a jury might reasonably have concluded supported a finding that the State Defendants were at least jointly responsible for employment decisions in which there was participation by the counties and under one interpretation of the evidence, that the state had the final word on employment decisions.

8. The Plaintiff alleged in her complaint, and there was evidence to support the allegation, that the State

Defendants had retaliated against the Plaintiff for filing an EEOC charge. The State Defendants did not address this issue in the District Court in their motion for summary judgment or brief, although the court allowed the State Defendants Motion for Summary Judgment as to all claims and dismissed the action as to the State Defendants. A reasonable inference to be drawn from the evidence was that Plaintiff was given her worst performance reviews ever in retailiation for her having filed a discrimination charge.

3. SUMMARY JUDGMENT WAS IMPROPER AS TO PLAINTIFF'S ADEA CLAIM AGAINST THE STATE DEFENDANTS.

The rules governing production of proof in Title VII cases are equally applicable in age discrimination cases. See Lovelace v. Sherwin-Williams co., 681 F.2d 230, 238 (4th cir. 1982).

The Court held that the Plaintiff's ADEA claim against the State Defendants

must fail, because in the Court's opinion Plaintiff had not shown that she had been rejected by the State Defendants for the position and had not shown that the dual recommendation was a sham used to cover up a discriminatory intent (A.pp. 57 - 59).

As heretofore argued in this petition, the Plaintiff was "rejected" by the State Defendants in that the final decision regarding the appointment was that of the State Defendants. If the final decision was not with the State Defendants, then the decision was one involving mutual consent which the State Defendants could have and should have withdrawn.

The first question asked the Plaintiff by the State Defendants at her interview was why she wanted the job, since she was so near retirement age (A.p. 153). The question was clearly inappropriate and was indicative of the state of mind of the interviewers with

reference to Plaintiff's age and must be considered with all other evidence of age discrimination which the Court simply ignored.

That age was a consideration of the State Level Defendants in selecting County Extension Chairman is supported by statistical evidence. (A.pp. 321 - 343.)

4. THE COURT ERRED IN ALLOWING THE STATE DEFENDANTS MOTION FOR SUMMARY JUDGMENT AND IN DISMISSING PLAINTIFF'S CAUSE OF ACTION FOR CONSPIRACY.

A careful review of the Plaintiff's Complaint (A.pp. 69 - 143) establishes that under the rules of notice pleading she articulated a cause of action for common law conspiracy as well as alleging entitlement to recovery under 42 USC 1985 for conspiracy.

The Court of Appeals affirmed the District Court's dismissal on grounds that there was no proof before the court of participation in any conspiracy by the State Defendants, and that summary judgment was appropriate.

A reasonable inference to be drawn from the evidence before the court was that the Plaintiff's "recommendation" was a sham, and that it was done with the intention of insulating the State Defendants from liability for discrimination charges they felt would be brought by the Plaintiff if she were not selected for the position. To insure that the Plaintiff would not be selected, Defendants engaged in conduct which a jury might reasonably find to have indicated that the State Defendants were attempting to ensure that the County would not indicate a preference for the Plaintiff.

The standard which the court should have applied to the evidence was not whether or not the State Defendants denied a conspiracy, but rather whether or not a jury might reasonably find from the evidence that a conspiracy existed.

5. SUMMARY JUDGMENT WAS INAPPROPRIATE ON PLAINTIFF'S CLAIM UNDER 42 USC 1983 AND THE COURT ERRED IN DISMISSING PLAINTIFF'S

CLAIM.

The Court dismissed Plaintiff's claim under 42 USC 1983, on the erroneous basis that Plaintiff had failed to establish a Title VII or ADEA claim and that the Section 1983 must therefore be dismissed since Plaintiff's claim was predicated on the theory that her statutory rights had been violated.

For reasons set forth elsewhere in this petition, that presumption on the part of the Court was error.

6. THE COURT'S GRANTING OF THE STATE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S BREACH OF CONTRACT CAUSE OF ACTION AND DISMISSAL OF THE ACTION WAS ERROR.

The errors of the District Court in allowing Plaintiff's Motion for Summary Judgment as to the Breach of Contract Claim and in dismissing the claim were several fold:

a. The Court erroneously characterized the Plaintiff's breach of contract claims against the state as relating only to those of an alleged third party beneficiary to the contract;

b. The Court erred in its findings and conclusions that the Plaintiff was not a third party beneficiary to the Memorandum of Understanding; and

c. The Court erred in its conclusions that Plaintiff had failed to show any breach of contract by discriminatory practices.

The Court's narrow characterization of Plaintiff's breach of contract action as being related only to whatever rights the Plaintiff might have under the "Memorandum of Understanding" was error. (See Plaintiff's complaint, A.pp. 135 - 138)

It is clear from the evidence which was before the Court that the Plaintiff's employers represented themselves to be equal employment opportunity employers, (A.pp. 244 - 247) and that her employers had agreed to treat Plaintiff and all other employees fairly in promotions and other benefits of employment. These procedures and standards formed a part of Plaintiff's contract with the Defendants.

Thus, when the Defendants elected to throw their own announced standards of "fair play" to the wind and to deny Plaintiff, or conspire to see that Plaintiff was denied, the appointment as Warren County Extension Chairman, the action constituted a breach of Plaintiff's contract of employment with the Defendants.

Further, Plaintiff submits that she was a third party beneficiary to the "Memorandum of Understanding" between the State Defendants and the County. The Court held that Plaintiff was a stranger to the contract and, therefore, could not recover (A.pp. 66 - 67). If Plaintiff and other employees were not the intended beneficiaries of the "Memorandum of Understanding," it is difficult to know exactly who were the beneficiaries. The Memorandum of Understanding was clearly designed to distinguish the responsibilities of each of the employers,

the State and the County, with reference to the appointment and means of compensating the mutual employees of each.

Nevertheless, even if the Plaintiff were not a third party beneficiary to the Memorandum of Understanding, her allegations of breach of contract should not have been dismissed on Summary Judgment. The totality of the circumstances supported the existence of a contract between the Plaintiff and Defendants containing assurances that fairness would be applied to employment decisions, and that the Defendants would not engage in impermissible discriminatory practices under Title VII and ADEA.

The Court's ruling was totally unrelated to the position taken by the State Defendants in their brief filed in support of their Motion for Summary Judgment.

Obviously, a Plaintiff cannot be expected to anticipate that the Court will

issue summary judgment against the Plaintiff based upon a theory first advanced in the Court's order allowing the summary judgment.

7. THE COURT ERRED WHEN IT IGNORED AND DISMISSED PLAINTIFF'S CLAIM OF RETALIATION AGAINST HER BY THE STATE DEFENDANTS ARISING FROM HER FILI .G OF AN EEOC GRIEVANCE.

The Court completely ignored and diregarded Plaintiff's claim of retaliation except to lump it with all other claims and dismiss it even in face of no evidence by the defendants to dispute it. Questions of retaliation are particularly inappropriate for summary judgment disposition, since the primary issue is one of intent and motive, Romero v. Union P. Railroad, 615 F2d 1303 (10th Cir. 1980).

The Defendants did not address the issue of Plaintiff's retaliation claim, and, based upon the evidence before the Court, summary judgment should have been granted the Plaintiff on the issue rather

than the Defendant, since there was no issue of material fact incident to the claim.

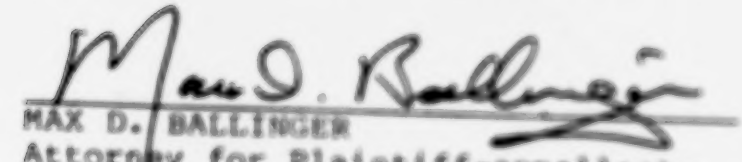
CONCLUSION

The Supreme Court should take this opportunity to enter a definitive ruling regarding the responsibility of an employer for the discriminatory acts of third parties with whom it participates in employment decisions.

The standards applied by the District Court and Court of Appeals in granting the State Defendant's Motion for Summary Judgment is contrary to the standards set by the Supreme Court in the cited and numerous other cases. The Supreme Court should terminate the practice of District Courts and federal Appeals Courts of using summary judgment as a means for resolving disputed material facts in favor of a moving party on motion for summary judgment in employment discrimination cases.

This the 8th day of July, 1987.

Respectfully Submitted:



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Decision and Order of the
UNITED STATES COURT OF APPEALS
For the Fourth Circuit

No. 86-2142

EMILY RUTH BALLINGER

Plaintiff - Appellant

v.

NORTH CAROLINA AGRICULTURAL EXTENSION SERVICE, NORTH CAROLINA STATE UNIVERSITY; BOARD OF WARREN COUNTY COMMISSIONERS; WARREN COUNTY; HUGH L. LINER, CHESTER D. BLACK, PAUL E. DEW, RUSSELL G. KING; individually and as Agents of NCAES and NCSU; BRUCE R. POULTON, individually and as Chancellor of NCSU; W. J. HARRIS, CLYDE R. EDWARDS, WILLIAM T. SKINNER, III, HERBERT C. HARRIS, GEORGE E. SHEARIN, SR., individually and as Warren County Commissioners; GLENWOOD NEWSOME, individually and as Agent of Board of Warren County Commission and OTHER CO-CONSPIRATORS here unnamed, individually

Defendant - Appellees

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (CA-84-193-5)

Argued Mar. 2, 1987, Decided Apr. 9, 1987

Before HALL, and WILKINS, Circuit Judges,

and TIMBERS, United States Circuit Judge for the Second Circuit, sitting by designation.

Max Dewey Ballinger for Appellant; Edwin Marion Speas, Jr., Special Deputy Attorney General, North Carolina Department of Justice (Lacy H. Thornburg, Attorney General on brief) for Appellees.

TIMBERS, Circuit Judge:

Emily Ruth Ballinger ("appellant") appeals from a judgment entered May 22, 1986 in the Eastern District of North Carolina, Terrence W. Boyle, District Judge, which granted summary judgment in favor of appellees North Carolina State University, North Carolina Agricultural Extension Service, Chancellor Bruce R. Poulton, Dr. Hugh L. Liner, Dr. Chester D. Black, Dr. Paul E. Dew and Russell C. King ("appellees") in an action pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq. (1982); the Age Discrimination in Employment Act, 29 U.S.C. Section 621 et seq. (1982 & Supp. III 1985); 42 U.S.C. Section 1985

(1982); 42 U.S.C. Section 1983 (1982); and a pendent breach of contract claim.1

1/ At the commencement of this action appellant named various state and local government agencies, officers and employees as defendants. Both the state-level and the local-level defendants moved for summary judgment. The motion of the state-level defendants was granted in its entirety, while the motion of the county-level defendants was granted in part and denied in part. Following this ruling, appellant and the local-level defendants entered into a settlement of the case as it applied to them. On September 8, 1986 appellant and the local-level defendants filed a stipulation of voluntary dismissal with prejudice as to all of appellant's claims against the local-level defendants. Appellees in the present case, therefore, are the state-level defendants and consist of: North Carolina State University; The North Carolina Extension Service; Chancellor Bruce R. Poulton, Dr. Chester D. Black, Director of the Extension Service; Dr. Paul E. Dew, Assistant Director of the Extension Service; Dr. Hugh L. Liner, District Extension Chairman for the North Central District; and Russell G. King, County Extension Chairman, Warren County.

The court held that appellant had failed to establish a prima facie case of discrimination based on sex, and, accordingly, was barred from bringing a claim under Title VII. The court also held that appellant had failed to establish a prima facie case of age discrimination under the Age Discrimination in Employment Act ("ADEA"). The court further held that appellant did not have standing to assert a conspiracy claim pursuant to Section 1985(3) because she was not a member of a class to which the provisions of that statute applied. The court dismissed appellant's Section 1983 claim because the claim was predicated upon the erroneous assumption that her statutory rights had been violated. Finally, the court dismissed the pendent breach of contract claim, holding that appellant was not an intended third-party beneficiary to the contract between the State and the Warren County

Board of County Commissioners.

On appeal appellant argues: first, that there is a genuine issue of material fact as to whether appellant established a prima facie case of discrimination based on sex; second, that there is a genuine issue of material fact as to whether appellant established a prima facie case of discrimination based on age; third, that appellant is a member of a class protected by Section 1985 and the court therefore erred in dismissing that claim; fourth, that, because there are genuine issues of material fact as to discrimination based on sex and age, the dismissal of appellant's Section 1983 claim was error; and, fifth, that the court erred in its determination that appellant was not a third-party beneficiary to the contract.

We hold that there are no genuine issues of material fact as to whether appellant established a prima facie case

of discrimination under either Title VII or ADEA. Summary judgment therefore was appropriate. We also hold that appellant has not made a particularized showing of participation in a conspiracy as required by Section 1985. We have considered appellant's remaining claims of error and have concluded that they are without merit.

We affirm.

I.

We summarize only those facts believed necessary to an understanding of the issues raised on appeal.

The North Carolina Extension Service ("Extension Service") is a division of the School of Agriculture and Life Sciences of North Carolina State University ("NCSU"). The Extension Service provides agricultural, home economics and other similar services to the people of the State. There are local extension programs in all 100 counties of North Carolina.

At the county level, the supervisor of the local Extension Service is called the County Extension Chairman ("County Chairman"). When a vacancy exists for a County Chairman position the District Extension Chairman meets with the Board of County Commissioners ("the County Board") for the county affected to discuss the qualifications required for the County Chairman for that particular county. A vacancy announcement is then circulated, requesting that qualified persons apply for the position.

Written applications are received and screened by employees of the Extension Service in order to determine which applicants possess the qualifications believed necessary. The applicants selected are then scheduled for interviews.

The interviews are conducted by the Director of the Extension Service, the Associate Director, the Assistant Director

for County Operations and the District Extension Chairman for the affected county. These persons develop through consensus a recommendation for presentation to the County Board. The County Board then interviews the person or persons recommended and makes the final hiring decision.

The process established by the Extension Service for filling county chairman positions was followed in selecting the County Chairman for Warren County, the position at issue in the present case. 2

2/ The only deviation was in the membership of the screening panel. Since the position of Assistant Director of County Operations was vacant in 1982, appellant was interviewed by three persons instead of four.

In February 1982 L. C. Cooper, the County Chairman for Warren County, announced his plans to retire from that position. At the time of Cooper's announcement appellant was employed by the Warren County Extension Service as the Home Economics Extension Agent. She was a fifty-five year old white female and had been employed by the Warren County Extension Service for approximately thirty one years. Russell King was a co-worker of appellant who had been employed by the Warren County Extension Service as an Associate Agricultural Extension Agent for approximately two years. King was a thirty-four year old white male, Both appellant and King applied for the position vacated by Cooper.

On March 16 Dr. Dew wrote to both appellant and King informing them that they were to be interviewed on March 23 by the screening panel. This panel, composed of Dr. Dew, Dr. Black and Dr. Liner,

interviewed both applicants on that date. At the conclusion of the interviews the screening panel determined that, subject to the county Board's willingness to accept a dual recommendation, it would recommend both appellant and King for the position. On March 30 Dr. Liner inquired of the County Board whether it would accept two recommendations from the screening panel. Dr. Liner refused to reveal the identities of the favored applicants. On April 2 the County Board advised Dr. Liner that it had agreed to receive two recommendations for consideration.

On April 5 the County Board met in executive session and interviewed appellant and King. Dr. Liner attended the interviews as a representative of the Extension Service. During the meeting, but prior to any final decision, a member of the County Board asked Dr. Liner how many women were serving as County Chairman

and about the relative performances of males and females. Dr. Liner indicated that there were six or seven women serving and he understood their average performance to be the same as the average performance of males.

At the conclusion of the interviews the County Board selected King as the Warren County Extension Chairman. Dr. Liner issued a press release announcing King's selection.

Shortly after the announcement appellant filed a grievance pursuant to the personnel policy of the Extension Service. On September 9 a panel was convened to take evidence. The panel found the appellant had been discriminated against on the basis of sex and age. The panel further found that the discrimination had been unintentional. Dr. Black, in his position as Director of the Extension Service, rejected the panel's report and asked it to reconvene

for the purpose of making specific factual findings as to the discrimination. The panel reconvened on October 18 and made findings and recommendations. The panel stated that its findings were based on appellant's evidence in view of the lack of any contrary evidence submitted by the Extension Service. On November 15 Dr. Black again rejected the report of the panel. This rejection was ratified by Chancellor Poulton on January 31, 1983.

At the same time that she initiated the grievance procedure, appellant filed a claim of employment discrimination with the Equal Employment Opportunity Commission ("EEOC") which issued a right-to-sue letter on December 9, 1983.

The letter was issued by EEOC without making its own findings. 3/

3/ Appellant filed a second claim with EEOC in October 1982 after receiving a poor Performance Review. In this claim she alleged that the poor review was in retaliation for both the filing of her grievance and the initial claim filed with EEOC. A right-to-sue letter with respect to this claim was issued by EEOC on December 9, 1983. EEOC made no findings of its own as to this claim. The district court did not specifically address the retaliation issue in its opinion. Nevertheless, a review of the entire record leads us to conclude that the claim is without merit.

On March 8, 1984 the instant action was commenced. The complaint alleged violations of Title VII, ADEA. Section 1983 and 1985 of the Civil Rights Act and a pendent breach of contract claim. On March 29, 1985 appellees moved for summary judgment. On May 22, 1986 the motion was granted as to all of appellant's claims. This appeal followed.

For the reasons stated below we affirm the order and judgment of the district court granting summary judgment in favor of appellees.

II.

(A) Standard of Review

The standard that an appellate court applies in reviewing an order which grants summary judgment is the same as that which governs the district court's initial action under Fed. R. Civ. P. 56(c). Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to

judgment as a matter of law. The facts, and the inferences to be drawn from the facts, must be viewed in the light most favorable to the party opposing the motion. Ross v. Communications Satellite Corp., 759 F.2d 355, 364 (4th Cir. 1985). We have emphasized repeatedly the drastic nature of the summary judgment remedy and have held that it should not be granted unless it is perfectly clear the there are no genuine issues of material fact in this case. Pierce v. Ford Motor Co., 190 F. 2d 910, 915 (4th Cir.), cert denied, 342 U.S. 887 (1951). Further, since "summary judgment is seldom appropriate in cases wherein particular states of mind are decisive as elements of [a] claim or defense," Charbonnages de France v. Smith, 597 f.2d 406, 414 (4th Cir. 1979), courts must take special care in cases such as the instant one because motive is often the critical issue in employment discrimination cases. Nevertheless,

"[t]he fact that motive is often the critical issue in employment discrimination cases does not mean that summary judgment is never an appropriate vehicle for resolution." International Woodworkers of America v. Chesapeake Bay Plywood Corp., 659 F. 2d 1259, 1272 (4th Cir. 1981) (emphasis in original). This is so because "... the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 106 S. Ct. 2505, 2510 (1986) (emphasis in original). We apply these principles to the instant case.

(B) The Title VII Claim

The Supreme Court repeatedly has set forth the controlling legal standards with respect to the burden of producing

evidence in a Title VII disparate treatment case such as this one:

> "First, the plaintiff has the burden of proving by the preponderance of the evidence a prima facie case of discrimination. Second, if the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant 'to articulate some legitimate, nondiscriminatory reason for the employee's rejection.' ... Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination."

Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981) (quoting McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973)). These standards, which allocate evidentiary burdens, serve to sharpen and focus the presentation of proof in all Title VII cases.

In order to establish a prima facie case of employment discrimination based on gender, appellant must have demonstrated,

by a preponderance of the evidence, that she was a member of a protected class who was qualified for an available position but was rejected under circumstances giving rise to an inference of unlawful discrimination. Burdine, supra, 450 U.S. at 253. In granting summary judgment in favor of appellees, the district court concluded that appellant failed to adduce sufficient evidence to establish a prima facie case because she was not rejected by appellees. Rather, the screening panel recommended her for the Warren County chairmanship. The court further held that there were no circumstances which gave rise to an inference of a discriminatory animus. Thus, we must determine whether the grant of summary judgment here at the prima facie stage was precipitous. We answer the inquiry in the negative.

Appellant recognizes that the dual recommendation to the County Board in and of itself, was not discriminatory. She

argues, however, that such recommendation was merely a ploy to escape liability under Title VII. She asserts that she has set forth adequate circumstances from which we should infer discriminatory intent. In effect, appellant invites us to disregard the fact the she was not rejected, but was recommended, for the promotion. We decline appellant's invitation.

In Lovelace v. Sherwin-Williams Co., 681 F.2d 230 (4th Cir. 1983), we held that a plaintiff may establish her discrimination case in either of two ways: first, through direct evidence of discrimination or, second, through the cumulative effect of indirect evidence of her employer's motivation. It is beyond cavil that there was no direct evidence of discrimination in the instant case. Our review of the factors which appellant contends are sufficient indirect evidence of discriminatory motivation leaves us

with the firm conviction that there was no indirect evidence of discrimination based on gender in this case. For example, appellant contends that it was "statistically documented" that the Extension Service discriminates against women, but she failed to produce the statistical evidence. She then claims that we may infer discriminatory motivation from the fact that Dr. Black, Dr. Dew and Dr. Liner "attended a political caucus in support of Russell King." Appellant offered no concrete evidence to support this conclusory allegation. In contrast, appellees produced sworn statements that the meeting was for the legitimate purpose of discussing a livestock agent for Warren County, and that a part of the duties of these three individuals required them to meet with farmers to discuss the farmers' various requirements. Appellant next claims that appellees permitted King to

file a second resume in support of his candidacy from which we should infer a discriminatory intent. The second resume, however, was submitted after the decision to recommend both appellant and King to the County Board already had been made. Finally, appellant claims that the grievance committee's finding of discrimination created a genuine issue of material fact, precluding summary judgment. Appellant, however, attempts to gloss over the second finding of the grievance committee, namely, that the discrimination was unintentional. There is no support in that report for her claim of inferred discriminatory intent. The additional factors asserted by appellant similarly are without merit.

We hold that appellant did not offer evidence sufficient to defeat summary judgment at the prima facie stage.

(C) The ADEA Claim

We have held that the substantive elements of an ADEA claim "are (a) that an employee covered by the Act (b) has suffered an unfavorable employment action by an employer covered by the Act (c) under circumstances in which the employee's 'age was a determining factor' in the action in the sense that "'but for" [her] employer's motive to discriminate against [her] because of [her] age, [s]he would not have suffered the action.'" Lovelace, supra, 681 F.2d at 238 (quoting Spagnuolo v. Whirlpool Corp., 641 F.2d 1109, 1112 (4th Cir. 1981)).

The standards relating to the burdens and order of proof in Title VII cases apply as well to cases arising under ADEA. In analyzing appellant's ADEA claim, the district court held that appellant had failed to establish a prima facie case of age discrimination because she was not rejected by appellees for the position she sought nor had she demonstrated, through

sufficient evidence, that the dual recommendation was a sham to cover up a discriminatory intent. We agree.

Appellant asserts as the foundation of her ADEA claim a question allegedly posed to her by a member of the screening panel at her initial interview. At that interview Dr. Black purportedly remarked to appellant, "from looking at this resume you are getting near or in the range of retirement." He then asked, "Why do you want the job of Extension Chairman with all the headaches, etc? I'm not in any way suggesting that you retire." Appellant wishes us to infer a discriminatory animus from this question. We decline to do so. Whatever negative consequences such a question might have in another context is open to speculation. In the instant case the question simply had no adverse impact on the decision of the screening panel because that panel recommended appellant to the County Board.

Likewise, the record in this case is devoid of any evidence from which to infer that "but for" her age, appellant would have been the only individual recommended for the promotion.

We hold that appellant failed to establish a prima facie case of discrimination under ADEA.

(D) The Conspiracy Claim Under 42 U.S.C. Section 1985(3)

The surviving version of Section 2 of the Civil Rights Act of 1871, 42 U.S.C. Section 1985(3), prohibits two or more persons from conspiring to deprive another of equal protection of the laws of of equal privileges and immunities under the laws. The district court dismissed appellant's claim brought pursuant to Section 1985(3) on appellees' motion for summary judgment both on the ground that appellant was not a member of a protected class within the coverage of Section 1985(3) and on the ground that the alleged

deprivation of a right created by Title VII could not be the basis for a claim under Section 1985(3). Great American Federal Savings and Loan Association v. Novotny, 442 U.S. 366 (1979).

We find it neither necessary or appropriate to rule on the issue of appellant's standing under Section 1985(3), for we agree with the dismissal on other grounds.

Quite simply, there is not proof, direct or indirect, of participation in any conspiracy by these appellees. Instead, appellant relies solely on the bare allegations of her complaint.

> "It is well settled that mere allegations of conspiracy, backed up by no factual showing of participation in a conspiracy, are insufficient to support such an action against a motion for summary judgment based on affidavits establishing the absence of any participation."

Buschi v. Kirven, 775 F.2d 1240, 1248 (4th Cir. 1985).

A review of the affidavits submitted

by appellees in support of their motion for summary judgment convinces us that the affidavits amply dispel the notion of any participation in the conspiratorial acts alleged by appellant in her conclusory manner.

The inquiry we must make is "...whether the evidence presents a sufficient disagreement to require submission to a jury whether it is so one-sided that one party must prevail as a matter of law". Anderson v. Liberty Lobby, Inc., supra, 106 S. Ct. at 2512. We find no evidence requiring submission to a jury on the issue of conspiracy.

We hold that the district court correctly granted summary judgment to appellees on appellant's Section 1985(3) claim.

We have considered the remaining claims of error and have concluded that they are without merit.

III.

To summarize:

We hold that the district court correctly held that appellant failed to establish a prima facie case of employment discrimination based on gender pursuant to Title VII; and that the district court correctly held that appellant failed to establish a prima facie case of employment discrimination based on age pursuant to ADEA. We also hold that the district court correctly dismissed appellant's claim brought pursuant to 42 U.S.C. Section 1985(3).

AFFIRMED

Decision and Order of
THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

No. 84-193-CIV-5

EMILY RUTH BALLINGER,)
Plaintiff)
)
)
v.)
)
NORTH CAROLINA AGRICULTURAL)
EXTENSION SERVICE; NORTH)
CAROLINA STATE UNIVERSITY)
et al,)
Defendants)

Decided May 21, 1986 Filed May 22, 1986

The plaintiff brings suit alleging age and sex discrimination and the violation of rights protected by the Constitution and laws of the United States, and state law. The defendants have moved for summary judgment under Rule 56 if the Fed. R. Civ. P.

The defendants are: North Carolina State University, the North Carolina Agricultural Extension Service, Hugh L. Liner, Chester D. Black, Paul E. Dew, Russell C. King and Bruce R. Poulton

[hereinafter "the state defendants"]; and, Warren County, the Warren County Board of Commissioners, W. J. Harris, Clyde R. Edwards, William T. Skinner, III, Herbert C. Harris, George E. Shearin, Sr. and Glenwood Newsome [hereinafter "the county defendants"]. The defendants have been sued in their individual and official capacities.

The plaintiff alleges:

(1) That the state and county defendants intentionally discriminated against her on the basis of her age and sex, in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. SS 626(b), 623 et seq, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq., respectively;

(2) That the state and county defendants conspired to deprive the plaintiff of the equal protection of the laws in violation of the U. S.

Constitution and 42 U.S.C. Section 1985(3);

(3) That the state and county defendants deprived plaintiff of rights secured to her by the Constitution and laws of the United States in violation of 42 U.S.C. Section 1983, and

(4) That the state and county defendants breached their contract with plaintiff under which they promised equal opportunity for promotion for all employees regardless of age and sex.

This court has federal question subject matter jurisdiction over plaintiff's first three claims by virtue of 28 U.S.C. SS 1331 and 1343. Additionally, the court asserts its pendent jurisdiction over the fourth claim, a state law claim. For the reasons that follow, the plaintiff fails to establish a prima facie case if age discrimination against either the county or state defendants. The plaintiff also

fails to establish a prima facie case if sexual discrimination against the state defendants. The plaintiff's evidence does overcome the county defendants' motion for summary judgment on her Title VII claim. Summary judgment is denied on plaintiff's Section 1983 claim against the county defendants. On all of the remaining claims against all defendants, summary judgment is allowed.

I.

Plaintiff Emily Ruth Ballinger was a fifty-five year old female employee of the North Carolina Agricultural Extension Service at the time the allegedly discriminatory acts took place. Ballinger had been employed by the Extension Service for a number of years as a Home Economics Extension Agent.

In February, 1982, L. C. Cooper, Warren County's Extension Chairman, announced plans to retire effective May 1st of that year. Both the plaintiff and

defendant Russell King, who was a thirty-four year old white male at the time of the alleged discriminatory acts, applied for the Extension Chairmanship position. Both the plaintiff and defendant King were interviewed on March 23, 1982 by defendants Black, Dew and Liner.1/

1/ Applicants for the position of Extension Chairman in a particular county must apply in writing and are then selected for interviews by Extension Service staff. persons selected for interviews are interviewed by the Director of the Extension Service (defendant Black), the Associate Director (defendant Dew), the Assistant Director for County Operations (vacant in March, 1982), and the District Extension Chairman for the county involved (defendant Liner). this panel examines the credentials of applicants for strengths and weaknesses and develops group consensus recommendations for the board of County Commissioners in the county where the Extension Chairmanship vacancy is located. The Board of County Commissioners then interviews the persons or persons recommended by the Extension Service. For a detailed description of the extension Service's hiring and appointment procedures, see Bazemore v. Friday, 751 F.2d 662 (4th Cir. 1984).

The screening panel decided to recommend both the plaintiff and defendant King to the Warren County Board of County Commissioners, subject to the Board's agreement to accept two recommendations. On March 30, 1982, defendant Liner requested permission from the County Commissioners to submit two names to the Board. Liner refused to identify which names were to be submitted. On April 2, 1982, the County Commissioners agreed to receive two names from the Extension staff for consideration.

On April 5, 1982, the Board of County Commissioners met in executive session to select an Extension Chairman. Defendant Liner attended this meeting on behalf of the Extension Service. The Board selected defendant King as the new Warren County Extension Chairman. Defendant Liner issued a press release shortly thereafter announcing King's selection.

Plaintiff followed this decision with

a grievance pursuant to the Extension Service's personnel policy. A four-member panel, which the Extension Service and plaintiff jointly chose, accepted plaintiff's allegations of age and sex discrimination. The panel found the discrimination to be unintentional. Defendant Black, as Director of the Extension Service, rejected these findings and asked the panel to reconvene to make specific findings as to discrimination. The panel reconvened on October 18, 1982, and made findings and recommendations which were again rejected by defendant Black. The panel noted in its findings that its decision was made almost entirely on the plaintiff's evidence since the Extension Service did not present contrary evidence.

Plaintiff brought a charge of employment discrimination with the Equal Employment Opportunity Commission within 180 days of the commission of the alleged

offenses pursuant to 42 U.S.C. Section 2000e-5(e). The plaintiff has satisfied the jurisdictional prerequisites to maintaining this action.

Plaintiff relies on the following forecast to create material facts in dispute. If plaintiff's evidence is insufficient to present such contested material facts, then summary judgment will be appropriate. Plaintiff claims that:

1. Statistics purportedly reveal years of discrimination against females and persons over the age of forty regarding appointment to County Extension Chairmanships between the years 1974 and 1982;

2. The extension Service staff, i.e., defendants Black, Dew and Liner, failed to notify county officials and residents of Warren County that if plaintiff were selected as Extension Chairman they would still get a livestock agent appointed to their county;

3. During plaintiff's screening interview, defendant Black questioned the plaintiff regarding her reason for seeking the county chairmanship at at time when she was eligible for retirement;

4. The Warren County Board of County Commissioners did not expect the screening panel to recommend two candidates because such dual recommendations are unusual;

5. The Extension staff allowed Russell King to submit a second, up-dated resume following his screening interview;

6. The Extension staff and the Board of County Commissioners received numerous letters supporting Russell King for the Extension Chairmanship, despite the fact that both King and the plaintiff were under instructions not to "politik" for the position. Plaintiff's supporters heeded her request to not contact state and county officials on her behalf, thereby giving the appearance that she lacked the broad support which King

enjoyed;

7. The screening panel attended a meeting on March 16, 1982 in Louisburg, North Carolina. The meeting was called by farmers and included a number of individuals from the Warren County Young Farmers, an association started by defendant Russell King;

8. Defendant Liner failed to instruct the Board of County Commissioners at its April 5, 1982 executive session that it could not consider an applicant's sex in selecting the Warren County Extension Chairman;

9. County Commission Chairman W. J. Harris stated that, had plaintiff been a male, she would have gotten the position as Extension Chairman, and

10. The grievance hearing panel found that plaintiff was probably rejected on account of unintentional age and sex discrimination, and defendant Black subsequently rejected these findings.

II.

A. Plaintiff's Title VII Claims

The Supreme Court has created rules designed to govern the allocation of burdens and order of presentation of proof in a Title VII case. United States Postal Service Board of Governors v. Aikens, 105 S. Ct. 1478, 1483 (1983). These rules governing the production of evidence also apply in a summary judgment context. See, e.g., Ross v. Communications Satellite Corp., 759 F.2d 355, 364-66 (4th Cir. 1985).

The Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), established an order of presentation of proof for use in Title VII cases involving disparate treatment. The plaintiff has the burden of proving by a preponderance of the evidence a prima facie case of discrimination. McDonnell Douglas Corp., 411 U.S. at 802; Texas Department of Community Affairs v.

Burdine, 450 U.S. 248, 252-53 (1981). Specifically, a plaintiff must show that the plaintiff was a member of a protected class who was qualified for an available position but was rejected under circumstances giving rise to an inference of unlawful discrimination. Burdine, 450 U.S. at 253; Cuthbertson v. Bigger Brothers, Inc., 702 F.2d 454, 458 (4th Cir. 1983). The burden of establishing a prima facie case is not an onerous one. Burdine, 450 U.S. at 253.

Once a plaintiff establishes a prima facie case, the burden of production shifts to the defendant to articulate some legitimate, non-discriminatory reason for the employee's rejection, thereby rebutting the presumption of discrimination raised by plaintiff's prima facie case. McDonnell Douglas Corp., 411 U.S. at 802; Ross. 759 F.2d at 365. The defendant successfully rebuts this presumption by producing evidence that the

plaintiff was rejected, or someone else preferred, for a legitimate, non-discriminatory reason. Id. To satisfy this burden, the employer need not persuade the court that it was actually motivated by the proffered reason--the employer's explanation must merely be legally sufficient to raise a genuine issue of fact as to whether it has discriminated against the plaintiff. Like the burden of establishing a prima facie case, this burden of production is not an onerous one.

Finally, if the employer produces a legitimate, nondiscriminatory explanation for the employee's rejection, the employee bears the ultimate burden of proving intentional discrimination by producing evidence that the employer's proffered reasons are pretextual. Burdine, 450 U.S. at 253. This burden of production merges with the ultimate burden of persuading the court that the employee has been the

victim of intentional discrimination. Id. at 256. The employee may satisfy his burden of persuasion either directly by persuading the court that a discriminatory reason more likely motivated the employer, or indirectly by showing that the employer's proffered explanation is not credible. Id. Because the first two burdens of production in the McDonnell Douglas formula are not difficult to satisfy, courts often resolve Title VII and ADEA cases on this third ground.

The court recognizes that summary judgment motions are less likely to be granted in Title VII and ADEA cases given the need to determine the employer's actual motive. Care is required in deciding whether the evidence presents a genuine issue of motive because summary judgment is seldom appropriate in cases wherein particular states of mind are decisive as elements of claims. Ross, 759 F.2d at 364, quoting Charbonnages de

France v. Smith, 597 F.2d 406, 414 (4th Cir. 1979).

Summary judgment may be used in Title VII and ADEA litigation where appropriate. See Ross, 759 F.2d at 365. See also International Woodworkers of America, AFL-CIO, CLC v. Chesapeake Bay Plywood Corp., 659 F.2d 1259, 1272 (4th Cir. 1981) ("fact that motive is often the critical issue in employment discrimination cases does not mean that summary judgment is never an appropriate vehicle for resolution."). Summary judgment is appropriate in instances in which no genuine issue of fact exists. Ross, 759 F.2d at 364. In short, if a defendant can show there is no reasonable possibility of plaintiff's proving at trial that the employer's proffered reasons for rejection are mere pretexts, summary judgment in the latter's favor is appropriate. Mason v. Continental Illinois National Bank, 704 F.2d 361, 366 (7th Cir. 1983).

1. State Defendants

The plaintiff does not meet her burden to forecast a prima facie case of discrimination against the state defendants. There was no showing of a rejection by these defendants nor of any circumstances giving rise to unlawful discrimination. Burdine, 450 U.S. at 253.

While courts have altered the test enunciated in McDonnell Douglas to fit the particular facts of individual cases, all prima facie tests require that the plaintiff be a member of a protected class who was qualified for a position but rejected under circumstances giving rise to an inference of unlawful discrimination. Burdine, 450 U.S. at 253. Rather than a rejection, plaintiff's evidence shows that the state defendants recommended her for the position she sought . The county defendants, and not the state defendants, rejected the plaintiff.

Plaintiff admits that the recommendation of two candidates by the state defendants, standing alone, does not evidence a discriminatory intent. However, plaintiff claims that the ten points set out earlier in this opinion constitute conduct from which the court can infer a discriminatory animus. The court finds this argument to be without merit.

The plaintiff's ten points do not raise an inference of unlawful discrimination. The court will briefly address these events raised by the plaintiff in support of her Title VII claim against the state defendants:

(1) There is no evidence that county officials erroneously assumed Warren County would not receive a livestock agent if plaintiff was selected as Extension Chairwoman. Affidavits filed by the state defendants indicate that defendants Liner, Black and Dew explained to farmers at the

Louisburg meeting on March 11th that Warren County would receive a livestock agent regardless of who was selected the County Extension Chairman.

(2) Occasionally more than one person is recommended by the Extension Service to a County Board to fill a vacancy. This is an accepted practice although frequently only one name is submitted to fill a vacancy. The state selection process allows for County Commissioners to select between the candidates when more than one applicant for a County Extension Chairmanship is recommended. Plaintiff concedes that the fact that more than one name was recommended is not discrimination on its own. Testimony at the grievance hearing established that defendant Liner refused to reveal to the County Commissioners the names of the two individuals recommended by the Extension Service. This contradicts plaintiff's claim that the

dual recommendation of plaintiff and King was a sham. 2/

2/ Plaintiff alleges that the state defendants recommended her along with King only to escape liability in case she brought suit. Plaintiff acknowledges that the state defendants knew she felt she had been "cheated" out of the Extension Chairmanship three years earlier. Such speculation as to the state defendants' motive, even if true, does not establish plaintiff was rejected because of her sex. A recommendation based on a fear of litigation cannot be equated with a recommendation intended to conceal sexual discrimination. The ultimate question in a Title VII action goes to whether vel non an employer intentionally and unlawfully discriminated in its hiring or promotional procedures.

(3) The state defendants' unrebutted affidavits indicate that applicants are routinely allowed to update their resumes following a screening interview. There are no facts before the court to support plaintiff's allegations that the state defendants' decision to allow King to submit an up-dated resume was part of a scheme to reduce the plaintiff's chances of being selected Warren County Extension Chairman.

(4) Likewise, there is no evidence to support plaintiff's conclusory allegations that the state defendants encouraged King's supporters to "politik" for him while simultaneously discouraging plaintiff's supporters from overtly supporting her. There are also no facts before the court indicating that the March 11, 1982 meeting in Louisburg was a political rally for King, as plaintiff claims it was. Defendants Liner, Black and Dew have filed affidavits stating that

the Extension Chairmanship selection process was discussed tangentially as it impacted on the county's ability to procure a livestock agent. Plaintiff's speculation that this meeting constituted a rally for King is based primarily on the fact that many of King's supporters were present at the meeting. Since King started the Warren County Young Farmers, and since the Louisburg meeting was for the benefit of farmers, the presence of King's supporters at the meeting is hardly surprising or incriminating. Moreover, the plaintiff was not even aware the meeting had occurred until defendant Liner himself brought it to her attention.

(5) Plaintiff has failed in any way to support her allegation that the state did not properly advise the Board of County Commissioners that consideration of an applicant's sex was an improper one. In fact, the evidence indicates that defendant Liner, in response to a question

from a Commissioner, replied that female extension chairmen performed as well as male chairmen. Whatever the County Commissioners' reasons for rejecting the plaintiff, there are no facts before the court indicating that the state defendants were aware of, or approved, the Board's allegedly improper basis for rejecting the plaintiff.

(6) The court finds the findings of the grievance panel to be legally insignificant as they relate to this case. First, there is a presumption against administrative collateral estoppel in antidiscrimination suits. Rosenfeld v. Department of the Army, 769 F.2d 237, 239 (4th Cir. 1985). Since the grievance hearing decision was not affirmed by a state court, that ruling is not entitled to preclusive effect under 28 U.S.C. Section 1738. Id. at 240-241. Second, the panel explicitly found that the state defendants had unintentionally

discriminated against the plaintiff. This finding, if any, is detrimental to plaintiff's cause of action. Third, the panel's findings were based on evidence produced in a relatively informal forum, without benefit of formal evidentiary and trial protections. Fourth, the panel explicitly mentioned that they accepted plaintiff's allegations at face value, given the lack of any evidence to the contrary.

Plaintiff has failed to produce evidence that the state defendants' actions toward her were motivated by a discriminatory animus. Therefore, the court need not prescribe a prima facie test for use in cases wherein an employee who was recommended, rather than rejected for a position, claims that the rejection was actually a ploy which the employer conceived to insulate itself from liability under Title VII. While plaintiff does allege that the state

defendants' dual recommendation was a ploy which they conceived for this very purpose, she has not produced facts to support this bald, conclusory allegation. Her accusation that the state and county defendants conspired together to discriminate against her by means of the dual recommendation is likewise unsubstantiated by direct or circumstantial evidence.

To establish a genuine issue of fact, the evidence "must create fair doubt; wholly speculative assertions will not suffice." Ross, 759 F.2d at 364. Given lack of evidence creating fair doubt, the state defendants' motion for summary judgment as to plaintiff's Title VII claim is ALLOWED. The facts presently before the court clearly reveal that the state defendants' actions towards the plaintiff during the Extension Chairman selection process do not allow for an inference of discriminatory intent. Plaintiff has not

made a prima facie showing of sexual discrimination on the part of the state defendants.

2. County Defendants

Plaintiff has, however, successfully established a prima facie case if sexual discrimination against the county defendants. She has shown herself to be a member of a protected class who was qualified for the position of Extension Chairman but nonetheless was rejected by the county defendants. Moreover, the position which plaintiff sought was not abolished and a member of a non-protected group was selected in her place. See Holmes v. Bevilacqua, 774 F.2d 636, 639 4th cir. 1985).

However, the county defendants have responded by articulating legitimate, non-discriminatory reasons for plaintiff's rejection. The county defendants cite plaintiff's lack of training in agricultural matters, her poor interview

during the Board's April 5 session, plaintiff's poor evaluation by fellow employees and her overall lack of leadership abilities as reasons for selecting King. Defendants also cite King's strong record and positive interview before the Board of County Commissioners. The plaintiff has admitted that she experienced some difficulty in answering questions during her interview before the Board and that she was not trained in agricultural matters. She further admits that she was given poor evaluations by fellow Extension Service employees, but attributes these poor reviews to personal pettiness. Based on these facts, the court finds that the county defendants have met their burden of articulating legitimate, non-discriminatory reasons for plaintiff's rejection.

Therefore, the central issue regarding this claim against the county

defendants is whether plaintiff has successfully shown that the defendants' proffered explanation for her rejection is a mere pretext. The court finds that the plaintiff has succeeded in making a showing of pretext.

The testimony of the Chairman of the Warren County Board of Commissioners, W. J. Harris, at plaintiff's grievance hearing raises a genuine issue as to whether plaintiff was rejected by the Board on account of her sex. Harris testified that it was the Board's consensus that a man was better suited for the position of Extension Chairman than a woman and that he may well have told a Warren County citizen that plaintiff would have been selected for the position had she been a man. These statements are direct evidence of discriminatory intent and provide a sufficient showing to rebut the county defendants' proffered explanation for plaintiff's rejection. 3/

3/ Given the statements of W.J. Harris, which constitute direct evidence of discriminatory intent, the court could discard the McDonnell Douglas burden-shifting scheme and find under ordinary principles for assessing conflicting evidence of motivation find that a genuine issue of material fact exists as to the county defendant's motives for rejecting the plaintiff. Holmes v. Bevilacqua, 774 F.2d 636, 638, 639 n. 5 (4th Cir. 1985); Sui v. Johnson, 748 F.2d 238; Lovelace v. Sherwin-Williams Co., 681 F.2d 230, 240 (4th Cir. 1982). Use of the McDonnell Douglas tests further illustrates that plaintiffs have adduced sufficient evidence to defeat the county defendants' motion for summary judgment.

B. ADEA Claim

The plaintiff has failed to make any showing that she was discriminated against on account of her age. There are no facts before the court suggesting that the county defendants rejected plaintiff on account of her age, even though defendant Harris did admit that gender had been a consideration in her rejection.

The rules governing burdens of production in Title VII cases are equally applicable in age discrimination cases. See Lovelace v. Sherwin-Williams Co., 681 F.2d 230, 238 (4th Cir. 1982). Even assuming plaintiff established a prima facie showing of age discrimination, the county defendants' reasons for rejecting her, as described above, do provide legitimate, non-discriminatory explanations for her rejection. Plaintiff therefore must produce evidence either attacking the credibility of county defendants' explanations or showing that,

as against the defendants' specific reasons, "age" is a more likely explanation for her rejection. Lovelace, 681 F. 2d at 238. Plaintiff has not produced evidence of this sort. There are no facts before this court presently suggesting that the county defendants rejected plaintiff on account of her age, even though defendant Harris did admit that plaintiff's gender had been a consideration in rejecting her as County Extension Chairman. Given plaintiff's failure to produce evidence showing that the county defendants' articulated non-discriminatory reasons for her rejection are pretextual, her ADEA claim against the county defendants must be dismissed.

The plaintiff's ADEA claim against the state defendants must fail for the same reason her Title VII claim against those defendants failed; she was not rejected by the state defendants for the

position she sought and has not shown that the dual recommendation was a sham used to cover up a discriminatory intent. Moreover, the event upon which plaintiff rests her ADEA claim against the state defendants does not allow for an inference of discriminatory intent. Plaintiff alleges that a question asked by defendant Black at her initial screening interview evidences a discriminatory animus based on age. At that interview, defendant Black purportedly asked plaintiff why she wanted the County Extension Chairmanship with all its attendant "headaches" when she was so close to retirement age. Plaintiff responded by stating that she had no intention of retiring. There is no indication in the record that plaintiff's age was ever mentioned again or considered by any defendant following this conversation.

Clearly this showing is not sufficient to establish a prima facie case

of age discrimination. Black's question does not show that it is "more likely than not" that the state defendants discriminated against plaintiff on account of her age. Once again, plaintiff's claim against the state defendants fails to uncover circumstances giving rise to an inference of unlawful discrimination. Her ADEA claim against the state defendants must therefore be dismissed.

Remaining Claims

Plaintiff has also brought Section 1985(3) and Section 1983 claims against the state and county defendants, as well as a breach of contract claim against both sets of defendants. Plaintiff's Section 1985(3) claim should be dismissed.

Section 1985(3) prohibits two or more persons from conspiring for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws. This section requires a racial or class-based

animus. Block v. Dotson, No. 85-2009, slip op. at 4 (4th Cir. May 2, 1986). As the Supreme Court recently noted, "It is a close question whether Section 1985(3) was intended to reach any class-based animus other than animus against Negroes and... Republicans." United Brotherhood of Carpenters v. Scott, 463 U.S. 825, 836 (1983). Given this restrictive interpretation of Section 1985(3) by the Court, "it is doubtful that the expansive view of the statute reflected in [earlier] cases could be considered of continuing precedential reliabilty." Buschi v. Kirven, 775 F.2d 1240, 1258 (4th Cir. 1985). Only those classes who are, in terms of enforcement of their rights, in "unprotected circumstances similar to those of victims of Klan violence" are within Section 1985(3)'s scope of protection. Id. ,quoting Scott, 463 U.S. at 851 (Blackmun, J., dissenting).

Given these higher courts' reluctance

to interpret Section 1985(3) broadly, this court is required to interpret the statute in a similarly narrow fashion. As plaintiff's class is based on her age and gender, the animus allegedly motivating the conspiracy in this case does not implicate the protections of Section 1985(3). See Block, slip op. at 15 (denying Section 1985(3) claim to orphans for similar reasons). Plaintiff therefore does not possess standing to bring a Section 1985(3) claim against the state and county defendants. See Leaf Tobacco Exporters Association v. Block, 749 F.2d 1106 (4th Cir. 1984). 4/

4/ Even if Ballinger did possess standing to sue under Section 1985(3), the court would dismiss the bulk of her claim on alternative grounds. The court has already dismissed Ballinger's ADEA claim as to all defendants. Therefore, she can base her Section 1985(3) claim only on alleged violations of Title VII. However, a plaintiff cannot invoke Section 1985(3) to seek redress for alleged violations of Title VII. Great American Savings & Loan Association v. Novotny, 442 U.S. 366

(1979). Accordingly, plaintiff's entire Section 1985(3) would fail, even had she possessed standing to sue under the statute.

Plaintiff's Section 1983 claim against North Carolina State University must be dismissed because that entity is a state agency entitled to Eleventh Amendment immunity. See Mayberry v. Dees, 663 F.2d 502, 504-05 (4th Cir. 1981). Plaintiff's claim must be dismissed as to the remaining state defendants as well. Plaintiff's Section 1983 claim is predicated upon the assumption that her statutory rights were violated: she has not produced any evidence that the state defendants violated her constitutional rights but instead relied in her written brief submitted in support of her Section 1983 claim on alleged violations of her federal statutory rights. Given the court's ruling that plaintiff has failed to establish a Title VII or ADEA claim against any state defendant, her Section

1983 claim against all state defendants must be dismissed in its entirety.

The county defendants argue that the plaintiff cannot demonstrate that they violated her constitutional or statutory federal rights entitling plaintiff to Section 1983 relief. However, the court has previously found that a genuine issue of material fact exists regarding plaintiff's Title VII claim. the court lacks sufficient information to determine whether the county defendants' actions constituted official policy or custom or whether qualified immunity is applicable in this case. In the present circumstances, the county defendants' motion for summary judgment regarding plaintiff's Section 1983 claim must be denied.

The county defendants do not enjoy Eleventh Amendment protection. Monell v. New York City Department of Social Services, 436 U.S. 658 (1978). The county

defendants argue that the plaintiff cannot demonstrate that they violated her constitutional or statutory federal rights entitling plaintiff to Section 1983 relief. However, the court has previously found that a genuine issue of material fact exists regarding plaintiff's Title VII claim. the court lacks sufficient information to determine whether the county defendants' actions constituted official policy or custom or whether qualified immunity is applicable in this case. In the present circumstances, the county defendants' motion for summary judgment regarding plaintiff's Section 1983 claim must be denied.

Plaintiff's final claim is that she is the third-party beneficiary to a contract between the state and county defendants which was subsequently breached. 5/ Plaintiff claims that this contract, entitled a Memorandum of Understanding, was breached by all defendants when she was discriminated against on account of her gender and age.

5/ Actual parties to this memorandum were the North Carolina Agricultural Extension Service and the North Carolina State and A&T State Universities on the one hand and the applicable Board of County Commissioners on the other hand.

Plaintiff's contract claim must fail because she cannot be deemed a third-party beneficiary to this contract. The agreement is between the state and individual Boards of County Commissioners. A stranger to a contract may sue under that contract as a third-party beneficiary only if the parties to the agreement intended that the third-party receive a benefit therefrom which could be enforced in court. Certain-teed Products Corp. v. Sanders, 264 N.C. 234 (1965). The explicit purpose of this agreement is to assure that "both elected and appointed officials of each level of government understand their respective responsibilities and relationships...." There is no evidence whatsoever that the agreement was entered into to provide Extension Service Agents with benefits which could be enforced in courts of law. The plaintiff cannot sue under the Memorandum of Understanding, and her

contract claim against the state and county defendants must be dismissed.

The court also notes, as an alternative grounds for dismissal against the state defendants, that the plaintiff has failed to show any breach of contract by means of discriminatory practices.

To summarize, the court makes the following ruling:

1. The motion of the state defendants for summary judgment is GRANTED as to all state defendants as to all of the plaintiff's claims, i.e., plaintiff's Title VII, ADEA, Section 1985(3), Section 1983 and breach of contract claims;

2. The county defendants' motion for summary judgment as to plaintiff's ADEA claim is GRANTED;

3. The county defendants' motion for summary judgment as to plaintiff's Section 1985(3) claim is GRANTED;

4. The county defendants' motion for summary judgment as to plaintiffs' breach

of contract claim is GRANTED;

5. The county defendants' motion for summary judgment as to plaintiffs' Title VII claim is DENIED; and

6. The county defendants' motion for summary judgment as to plaintiff's Section 1983 claim is DENIED.

SO ORDERED this 21st day of May, 1986.

s/TERRENCE W. BOYLE

UNITED STATES DISTRICT COURT JUDGE

Complaint and Request for Admissions
filed by Plaintiff on
March 8, 1984 in the

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

EASTERN DIVISION

Civil Action Number: 84-193-CIV-S

EMILY RUTH BALLINGER,

Plaintiff,

versus

NORTH CAROLINA AGRICULTURAL EXTENSION SERVICE; NORTH CAROLINA STATE UNIVERSITY; BOARD OF WARREN COUNTY COMMISSIONERS; WARREN COUNTY; HUGH L. LINER, Individually and as Agent of the North Carolina Agricultural Extension Service and North Carolina State University; CHESTER D. BLACK, Individually and as Agent of The North Carolina Agricultural Extension Service and North Carolina State University; PAUL E. DEW, Individually and as Agent of the North Carolina Agricultural Extension Service and North Carolina State University; RUSSELL C. KING, Individually and as Agent of the North Carolina Agricultural Extension Service, North Carolina State University, Warren County, and the Board of Warren County Commissioners; BRUCE R. POULTON, Individually and as Chancellor of North Carolina State University, W. J. HARRIS, Individually and as Warren County Commissioner; CLYDE R. EDWARDS, Individually and as Warren County Commissioner; WILLIAM T. SKINNER, III, Individually and as Warren County

Commissioner; HERBERT C. HARRIS, Individually and as Warren County Commissioner; GEORGE E. SHEARIN, SR., Individually and as Warren County Commissioner; GLENWOOD NEWSOME, Individually and as Warren County Manager, as Agent of the Board of Warren County Commissioners and as Agent of Warren County; and OTHER CO-CONSPIRATORS here unnamed;

Defendants.

COMPLAINT

and

REQUEST FOR ADMISSIONS

PLAINTIFF, complaining of the defendants, alleges, and, pursuant to the provisions of Rule 36 of the Federal Rules of Civil Procedure, requests and demands that the defendants admit, the following:

FIRST CAUSE OF ACTION

Plaintiff, complaining of the defendants as a first cause of action, alleges:

1

This is a suit:

a. In equity and otherwise

authorized and instituted pursuant to Title VII of the Civil Rights Act of 1964, 42 USC 2000e et sequentia,

b. Authorized and initiated under the provisions of Section 7(b) of the Age Discrimination in Employment Act (ADEA), 29 USC 626(b), 29 USC 623 et sequentia,

c. Instituted pursuant to 29 USC 216(b),

d. Instituted pursuant to 29 USC 217,

e. For declaratory relief pursuant to 28 USC 2201 and 28 USC 2202

f. Instituted under the provisions of Title VII of the Civil Rights Act of 1964, 42 USC 1983 et sequentia,

g. Instituted pursuant to 42 USC 1985 et sequentia, and

h. For breach of contract.

Jurisdiction of this Court is invoked pursuant to:

a. 42 USC 2000e-2(a)(1),

b. 42 USC 2000e-2(a)(2),

c. 42 USC 2000e-5

d. 28 USC 1337,

e. 29 USC 216(b)

f. 29 USC 217

g. 28 USC 1343(1)

h. 28 USC 1343(2)

i. 28 USC 1343(3)

j. 28 USC 1343(4),

k. 29 USC 623(a)(1),

l. 29 USC 626(b)

m. 29 USC 626(c)

n. 29 USC 623(d),

o. 42 USC 1983, and

p. 42 USC 1985.

Declaratory relief is sought under 28 USC 2201 and 2202.

Jurisdiction of this Court is invoked:

a. To secure protection of and to redress deprivation of rights secured by 42 USC section 2000e et sequentia providing for relief against sex discrimination in employment,

b. To redress deprivation of rights secured by 29 USC 623 et sequentia providing for relief against age discrimination in employment,

c. To redress deprivation of due process procedural due process rights to which the plaintiff was entitled under the circumstances,

d. To redress deprivation of rights secured by 42 USC 1983 et sequentia, providing for relief against violation of ones civil rights, and

e. To redress deprivation of rights secured by 42 USC 1985 et sequentia, providing for relief for one who has been damaged pursuant to a conspiracy to have one's rights guaranteed by the Constitution of the United States of America violated.

4

All conditions precedent to jurisdiction under 42 USC 2000e-2(a)(1) and 42 USC 2000e-2(a)(2), have occurred or been complied with, including, but not limited to, the following:

a. Charges of employment discrimination were filed with the Equal Employment Opportunity Commission within 180 days of the commission of the unfair employment practices.

b. Notifications of Right to Sue were received from the United States Justice Department on

December 12, 1983, by the plaintiff's attorney. A copy of these notifications are appended hereto as "Exhibit A" and "Exhibit B".

c. This complaint has been filed within 90 days of receipt of the Notifications of Right to Sue.

5

All conditions precedent to jurisdiction under 29 USC 623(a)(1) and 29 USC 623(d) have occurred or been complied with, including, but not limited to, the following:

a. A charge alleging unlawful discrimination was filed with the Equal Employment Opportunity Commission on September 21, 1982, and within 180 days of the commission of the unfair employment practice;

b. The Equal Employment Opportunity Commission informed the

prospective defendants named in the charge of the charge.

c. The Equal Employment Opportunity Commission failed to effect voluntary compliance with the requirements of the Age Discrimination in Employment Act.

d. More than 60 days has elapsed since plaintiff filed her charge of unlawful discrimination with the Equal Employment Opportunity Commission.

6

Plaintiff is a white female born December 3, 1926, and citizen and resident of Warren County, North Carolina. Plaintiff simultaneously maintains residence in the Guilford College Community, Guilford County, North Carolina.

At all times alleged herein, plaintiff was an employee (within the

meaning of 42 USC 2000e-2(a), 29 USC 623(a), 29 USC 623(d), and other) of defendants:

The North Carolina Agricultural Extension Service
North Carolina State University
Warren County, and
the Board of Warren County Commissioners

in accordance with the arrangement set forth in the attached "Memorandum of Understanding" identified as Exhibit C.

This "Memorandum of Understanding" is hereby incorporated into and made a part of this paragraph of this complaint by reference.

Plaintiff had been so employed by these defendants for 33 years at the time of the acts alleged herein and plaintiff had the position of Home Economics Extension Agent.

Plaintiff was at all times complained of in this complaint an aggrieved party

and an "employee" within the meaning of 42 USC 2000e(f) and 29 USC 630(f).

7

Defendant North Carolina Agricultural Extension Service is a part of the School of Agriculture and Life Sciences of North Carolina State University by Federal and State legislation for the specific purposes of "extending" the educational service of the University to the people of the State of North Carolina on subjects relating to agriculture, home economics, 4-H and youth, community development, and natural resource development.

8

Defendant North Carolina State University is an 1862 Land Grant University which is a part of the Consolidated University System of the State of North Carolina.

9

Defendant Warren County is a county within the State of North Carolina.

10

Defendant Board of Warren County Commissioners is the elected board of officials elected by the registered voters of Warren County to govern the affairs of Warren County, North Carolina.

11

Defendants North Carolina Agricultural Extension Service, North Carolina State University, Warren County, and the Board of Warren County Commissioners are all parties to a "Memorandum of Understanding" which sets forth the duties and responsibilities and the division of duties and responsibilities between these parties.

A copy of the "Memorandum of Understanding" is appended hereto as Exhibit C, and is hereby incorporated into and made a part of this paragraph of this complaint by reference.

12

Defendant Hugh L. Liner is a citizen and resident of Wake County, North Carolina.

Defendant Hugh L. Liner was at all times alleged herein the District Chairman of the North Carolina Agricultural Extension Service for the District which includes Warren County, and he was and is an employee of North Carolina State University.

13

Defendant Chester D. Black is a citizen and resident of Wake County, North Carolina.

Defendant Chester D. Black was at all times alleged herein the Director of the North Carolina Agricultural Extension Service, and he was and is an employee of North Carolina State University.

14

Defendant Paul E. Dew is a citizen and resident of Wake County, North

Carolina.

Defendant Paul E. Dew was at all times alleged herein the Associate Director of the North Carolina Agricultural Extension Service, and he was and is an employee of North Carolina State University.

15

Each of defendants Hugh L. Liner, Chester D. Black, and Paul E. Dew at all times alleged herein acted under color of State and Local governmental authority, and:

a. Individually, and, plaintiff is informed and believes, and therefore alleges,

b. As agent, servant, and employee of, and at all times under color of his employment by the North Carolina Agricultural Extension Service and North Carolina State University, and

c. As a co-conspirator with other

named defendants and unnamed co-conspirators in a scheme to deprive plaintiff of rights guaranteed to her under Title VII of the Civil Rights Act of 1964, under the Constitution of the State of North Carolina (particularly Article I, Section 19) and the Constitution of the United States of America (particularly Article I, Section 10, Article VI, Section 2, and the due process and equal protection clauses of the Fourteenth Amendment).

16

Defendant Bruce R. Poulton is a citizen and resident of Wake County North Carolina. At all times alleged herein, Bruce R. Poulton acted under color of State and Local governmental authority, and:

a. Individually, and, plaintiff is

informed and believes and, therefore, alleges,

b. As Chancellor of North Carolina State University,

c. As agent, servant, and employee of North Carolina State University, and

d. At all times under color of his employment by North Carolina State University.

17

Defendant W. J. Harris is a citizen and resident of Warren County, North Carolina.

18

Defendant Clyde R. Edwards is a citizen and resident of Warren County, North Carolina.

19

Defendant William T. Skinner, III, is a citizen and resident of Warren County, North Carolina.

20

Defendant Herbert C. Harris is a citizen and resident of Warren County, North Carolina.

21

Defendant George E. Shearin, Sr., is a citizen and resident of Warren County, North Carolina.

22

Defendants W. J. Harris, Clyde R. Edwards, William T. Skinner, III, Herbert C. Harris, and George E. Shearin, Sr., were at all times alleged herein the elected members of the Board of Warren County Commissioners. At all times alleged herein, each of these defendants acted under color of State and Local governmental authority and:

a. Individually,

b. As a Warren County Commissioner,

c. As an agent of Warren County and the Board of Warren County Commissioners,

d. As co-conspirators with the other named defendants and unnamed co-conspirators to interfere with plaintiff's contractual rights with certain of the defendants and to deprive plaintiff of the rights guaranteed to her by Title VII of the Civil Rights Act of 1964, the rights and protections afforded plaintiff by 29 USC 623 et sequentia, other laws and protections as set forth herein, and the rights guaranteed to plaintiff under the Constitutions of the State of North Carolina and the United States of America as set forth herein.

Plaintiff is informed and believes and, therefore, alleges that Glenwood Newsome is a citizen and resident of Warren County, North Carolina. At all times alleged herein, Glenwood Newsome was employed by Warren County and the Board of

Warren County Commissioners as County Manager and that at all times alleged herein he acted under color of state and local governmental authority and in collusion with and as a co-conspirator with the other named and unnamed co-conspirators.

23

Defendant Russell C. King is a white male citizen and resident of Warren County, North Carolina. At the time of the acts alleged herein, Russell C. King was, plaintiff is informed and believes and, therefore, alleges, 34 years old.

24

Prior to his appointment to the position of County Chairman of the Agricultural Extension Service for Warren County, Russell C. King had been employed by the North Carolina Agricultural Extension Service for two years and eight months.

At all times alleged herein, Russell C. King acted under color of State and Local Governmental authority, and:

a. Individually,

b. In his capacity as the agent, servant, and employee of, and at all times acted under color of his employment by, the North Carolina Agricultural Extension Service, North Carolina State University, Warren County, and the Board of Warren County Commissioners,

c. As a co-conspirator with other named defendants and unnamed co-conspirators to deprive the plaintiff of rights guaranteed to her in equity, by law, and by the Constitution of the United States and the State of North Carolina.

Defendants are an "employer" within the meaning of 42 USC 2000e-(b), 42 USC 2000e-2(a), 29 USC 623(a), 29 USC 623(d), 29 USC 630(b),and other. Defendants are engaged in commerce or industry affecting commerce or both within the meaning of 42 USC 2000e(g), 42 USC 2000e(h), 29 USC 630(g), and 29 USC 630(h).

At all times herein complained of defendants North Carolina Agricultural Extension Service, North Carolina State University, Warren County, and Board of Warren County Commissioners operated and maintained a facility at 101 South Main Street, Warrenton, North Carolina, which facility has employed 13 persons for each working day in each of 20 or more calendar weeks in each of the five years immediately preceding the filing of this action.

Each the North Carolina Agricultural Extension Service and North Carolina State

University employs hundreds of persons throughout the State of North Carolina and have so employed hundreds of persons for each working day in each of 20 or more calendar weeks in each of the five years immediately preceding the filing of this action.

Each Warren County and the Board of Warren County Commissioners has employed over 20 persons for each working day in each of 20 or more calendar weeks in each of the five years immediately preceding the filing of this action.

In addition or in the alternative, defendants are "employers" within the meaning of 29 USC 630(b)(1), 29 USC 630(b)(2), and 42 USC 2000e(f).

27

This is, in part, a proceeding for a declaratory judgment as to plaintiff's rights and for a permanent injunction restraining defendants from maintaining either a policy, practice, custom, or

usage of discrimination against the female plaintiff because of sex and age with respect to compensation, terms, conditions, and privileges of employment and in ways which deprive plaintiff of equal employment opportunities and in ways which otherwise affect her status as an employee because of sex, age, and otherwise.

28

This complaint also seeks restitution to plaintiff of all rights, privileges, benefits, and income she would have received but for defendants' unlawful and discriminatory practices, as well as promotion to the job for which she was entitled and which she would have received but for the unlawful and wrongful practices of the defendants as set forth in this complaint.

29

Plaintiff has been an employee of the North Carolina Agricultural Extension

Service and North Carolina State University since September 1, 1948.

Since September 1, 1951, plaintiff has worked in Warren County and has, in addition, been an employee of Warren County and the Board of Warren County Commissioners.

Under the "Memorandum of Understanding" entered into by and between the North Carolina Agricultural Extension Service, North Carolina State University, Warren County, and the Board of Warren County Commissioners, plaintiff's tenure of employment has been subject to the approval of Warren County and the Board of Warren County Commissioners so that, de facto, plaintiff has been an employee of Warren County and the Board of Warren County Commissioners since September 1, 1951. Plaintiff receives her pay in the form of two checks: One from the North Carolina Agricultural Extension Service

and one from Warren County.

30

In consideration for plaintiff's working for the defendants, the defendants have, over the years, enacted certain procedures purportedly for ensuring that their employees, and particularly this plaintiff, are to be treated fairly particularly as relates to compensation the employees receive, opportunities for promotion, and benefits, which procedures are in the nature of a contract between the defendants and the plaintiff.

Particularly, the plaintiff relied upon representations by the defendants the North Carolina Agricultural Extension Service, North Carolina State University, Warren County, and the Board of Warren County Commissioners that they were equal employment opportunity employers and that as a consideration for her working for the defendants that she had a right to apply for position vacancies for which she was

qualified, and that if she were the most qualified applicant that she would be given the position.

31

As a matter of practice and for the majority of the years during which the plaintiff has been employed by the defendants North Carolina Agricultural Extension Service and North Carolina State University, the County Chairmanship positions and their equivalents with the Agricultural Extension Service were granted only to white male employees with greatest seniority. Blacks and women were not even considered for these positions which carried greater prestige and compensation.

In recent years, the North Carolina Agricultural Extension Service and North Carolina State University purported to become equal employment opportunity employers. As a matter of practice,

however, there have been only token appointments to County Chairmanships of women.

In recent years, the North Carolina Agricultural Extension Service and North Carolina State University announced that seniority would no longer be a consideration for County Chairmanships. Plaintiff is informed and believes and, therefore, alleges that this announcement was consistent with the subsequent practices of the North Carolina Agricultural Extension Service and North Carolina State University to recommend younger candidates (particularly those under the age of 40) for the positions, even though there were older applicants for the position (less than 69 years of age) who were more qualified or equally qualified with the younger applicants, and to keep women with seniority from becoming County Chairmen ahead of men without seniority.

In the Spring of 1979, there was an announcement by North Carolina Agricultural Extension Service that the position of County Chairman of the North Carolina Agricultural Extension Service in Warren County would shortly exist by reason of the retirement of the then current County Chairman of the Extension Service. Interested applicants were to submit their applications by a certain date.

At the time, there was a lawsuit pending in Federal Court which had been brought by a group of black Extension Service employees.

32

Plaintiff followed all of the appropriate application procedures, and had an interview with a selection committee composed of three administrative agents of the North Carolina Agricultural

Extension Service.

Plaintiff's competition for the position was a black male who was not as qualified for the position as the plaintiff. Plaintiff was the more qualified of the two applicants for the position.

The black male was recommended by the North Carolina Agricultural Extension Service to the Board of Warren County Commissioners for the position, and the Board of Warren County Commissioners approved the recommendation and the black male was given the job.

It was general knowledge that plaintiff had not been promoted to the position she by all right should have had, and that a grave injustice had been done to the plaintiff in the form of sex and race discrimination. Although plaintiff was not pleased that she had been so victimized, and her awareness of the injustice that had been done her was

generally known to the defendants or a portion of them or all, she did not file a claim of discrimination because she was apprehensive that she would be discharged from her employment.

33

On February 25, 1982, plaintiff saw a staff vacancy sheet which announced that the position of Warren County Extension Chairman would be vacant again due to the fact that the then current chairman was retiring.

The position of County Chairman involves duties which may be handled equally well by male or female, young or old, and better by a person of greater qualifications.

Applications were to be submitted before March 15, 1982. Further instructions were that each individual interested in applying for the position should contact his District Chairman before contacting Paul E. Dew.

Hugh L. Liner was the plaintiff's District Chairman.

34

On March 1, 1982, Hugh L. Liner met with the Warren County Extension staff and announced the vacancy. He also announced the procedures which would be followed in filling the vacancy. Each person present, including plaintiff and Russell C. King, was instructed that he was not to get people to write letters on his behalf, and that Hugh L. Liner did not want "campaigning."

In accordance with the instructions of Hugh L. Liner, plaintiff expressed her interest in the position and was told by Hugh L. Liner to write a letter to Paul E. Dew expressing her interest.

Plaintiff wrote such a letter on March 9, 1982.

About this time, Russell C. King advised plaintiff that he was seeking the position also. Russell C. King was not

equally qualified to the plaintiff and was in fact less qualified than the plaintiff for the vacancy by reason of background, education, experience, and all other.

Russell C. King is a male and was age 34 at the time of the acts alleged herein.

35

At some point unknown to the plaintiff following the announcement of the then current County Chairman's retirement, plaintiff is informed and believes and, therefore, alleges that a young Warren County farmer, Jim Harris, who was a member of an organization of young farmers organized in part through the efforts of Russell C. King, contacted Chester D. Black to arrange to surreptiously meet with Chester D. Black, Hugh L. Liner, and Paul E. Dew and some young (under age 40) Warren County farmers in Louisburg in an adjoining county for purposes of discussing the appointment of a new County Chairman.

Russell C. King had been instrumental in getting this group of young farmers organized.

Russell King worked in this organization of these young farmers with Jim Harris and Irvin D. Smith.

36

The meeting was subsequently held in Louisburg on March 11, 1982.

Those in attendance at the meeting knew at the time that there were three applicants for the County Chairmanship and that the three were Russell C. King, Emily Ballinger, and George W. Koonce.

Plaintiff is informed and believes and, therefore, alleges that the moving force behind the meeting was Russell C. King, and that he knew of the plans of the members of this group of young farmers to seek such a meeting.

Plaintiff is further informed and believes and, therefore, alleges that the purpose of the meeting was to formulate a

plan and scheme to ensure that neither the plaintiff nor George W. Koonce (a black male over age 40) received the appointment as the new County Chairman.

In addition or in the alternative, plaintiff is informed and believes and, therefore, alleges that the group of young farmers brought pressure to bear on Hugh L. Liner, Chester D. Black, and Paul E. Dew that the next County Chairman be trained in agriculture and that the next County Chairman be Russell C. King, and that the vacancy created by the retirement of the then County Chairman be filled with a livestock agent.

Russell King was an applicant trained in agriculture, and plaintiff is informed and believes and, therefore, alleges that the group of young farmers actively sought and campaigned (1) for Russell King's appointment to the position; (2) that a male over 40 and less than 69 be not appointed; (3) that a black be not

appointed; (4) that a female (Emily Ballinger) be not appointed; and (5) that a female over 40 and less than 69 (Emily Ballinger) be not appointed.

Plaintiff is further informed and believes and, therefore, alleges that Russell King knew the meeting was planned and that it was "suggested" that he not attend by one or more of the defendants with his concurrence.

If Hugh L. Liner, Chester D. Black, and Paul E. Dew had not decided prior to March 11, 1982, to see that plaintiff did not get the position of County Chairman, all of which is denied, they were certainly aware of a political pressure group organized in part by Russell C. King's desire to see (1) that plaintiff did not get the appointment and (2) that Russell C. King did receive the appointment and Hugh L. Liner, Chester D. Black, and Paul E. Dew joined with the political pressure group's efforts to see

that plaintiff did not get the position, although such was a wrong to the plaintiff.

37

A day or so following March 16, 1982, plaintiff received a letter from Paul E. Dew setting an appointment for her to come for an interview in Raleigh on March 23, 1982. Plaintiff was instructed to bring five copies of her resume with her to the interview.

38

On March 23, 1982, plaintiff went to Raleigh for her interview. Present for the interview were Chester D. Black, Paul E. Dew, and Hugh L. Liner.

39

One of the first observations made by the committee, specifically Chester D. Black, was that from looking at plaintiff's resume he noticed that she was getting near or in the range of retirement age. Plaintiff had no intention of

retiring then, and she has no intention of retiring now. Plaintiff was interrogated on the point of her age and her retirement.

40

As plaintiff left the interview, Russell C. King was waiting in the outer office for his interview.

41

Plaintiff is informed and believes and, therefore, alleges, that either during Russell C. King's interview or thereafter, Russell C. King, either on his own initiative or at the suggestion of Chester D. Black, Paul E. Dew, and Hugh L. Liner, or one or more of them, prepared another resume (and after the March 23, 1982, purported deadline) which resume contained certain representations which were not entirely candid, but which new resume had the overall effect of presenting Russell C. King in a more favorable light.

42

Plaintiff is informed and believes and, therefore, alleges that the second application was prepared by Russell C. King on March 30, 1982, and received by the North Carolina Agricultural Extension Service sometime thereafter, and that it was this second application which was submitted to the Board of Warren County Commissioners when the North Carolina Agricultural Extension Service made its recommendation to the Board of Warren County Commissioners for the appointment of Russell C. King to the position.

43

On March 24, 1982, The Warren Record published a letter to the Editor from one Irvin D. Smith (an active force in the young farmers association organized by Russell C. King and one of the young farmers present at the meeting in Louisburg), which letter was critical of all areas of the Warren County Extension

Service (and particularly the area over which the plaintiff had responsibility) except for the area over which Russell C. King had responsibility.

44

Russell C. King had contact with and worked with Irvin D. Smith. The letter among other called upon farmers to appear at the County Commissioners meeting on April 5, 1982, at which time the County Chairman was to be selected to insure that "a railroad job" was not put on the farmers again. The letter furthered the cause of a young (under 40) male against a female and against a person between the ages of 40 and 69's being apppointed County Chairman.

45

Plaintiff is informed and believes and, therefore, alleges that Russell C. King had expressed his interest in the County Chairmanship to Irvin D. Smith, and that Russell C. King either knew that the

letter was going to be written in advance of its writing or encouraged Irvin D. Smith's overt support, or both.

46

A staff meeting of the Warren County Extension Service was called by the County Chairman on March 26, 1982, which meeting was attended by plaintiff, Russell C. King, and others.

The subject of the meeting was the letter to the Editor of The Warren Record.

The County Chairman indicated that he planned to advise Hugh L. Liner of the letter. A copy of the letter was sent to Hugh L. Liner.

47

On March 29, 1982, plaintiff spoke with Hugh L. Liner and expressed her concerns about the letter.

Hugh L. Liner's only response was that he had read the letter several times and that he did not consider the letter an

attack on the plaintiff.

The reasonable inference to be drawn from the letter is that it was, in fact, an attack on the plaintiff and an attack against (1) a female, (2) a person over 40 and less than 69, and (3) a black's being appointed County Chairman.

A copy of the letter is appended hereto as Exhibit D.

48

Prior to April 2, 1982, the procedure followed by the North Carolina Agricultural Extension Service as relates to Warren County was to recommend only one candidate to the County Commissioners for the position of County Chairman.

49

The stated policy of the North Carolina Agricultural Extension Service was to recommend the most qualified applicant to the Commissioners although, de facto, this policy was widely ignored

when the most qualified applicant was a woman as is, in part, evidenced by the fact that the plaintiff was not solely recommended and that in the entire over 50 year history of the Extension Service there have only been six female County Chairmen and four of those were in districts which had a female district Chairman, and, of late, when the more qualified applicant was over 40.

50

There had, at that time, never been a female County Chairman in a county in a district over which Hugh I. Liner was chairman, and there has never been a female chairman in Warren County.

51

Plaintiff is informed and believes and, therefore, alleges that prior to April 2, 1982, defendants North Carolina Agricultural Extension Service, North Carolina State University, Hugh L. Liner, Paul E. Dew, and Chester Black wilfully

decided to recommend Russell C. King for the position of County Chairman and that the decision to recommend Russell L. King was based on age, sex, and other impermissible and discriminatory considerations and all in furtherance of the scheme and conspiracy then underway to see that Russell C. King received the position and that plaintiff did not, thereby violating 42 USC 2000e-2, 29 USC 623(a)(1), 42 USC 1983, 42 USC 1985, and other applicable laws.

Plaintiff is further informed and believes and, therefore, alleges that these same defendants, acting in concert with other named and unnamed co-conspirators, and in an effort to avoid responsibility for their actions in the event plaintiff filed a discrimination charge, decided to and did submit plaintiff's name to the Commissioners for consideration, while at the same time working surreptiously, and permitting

others to work surreptiously, to see that plaintiff did not get the position.

On April 2, 1982, Hugh L. Liner met with plaintiff and Russell C. King and advised them that in this case "we are going to make a little change. We are going to recommend the two of you to the Board of Warren County Commissioners on Monday and let them decide."

52

Defendants further advised plaintiff and Russell C. King that whichever one received the appointment would receive a salary increase of $2,500 over his present salary.

It is noted and alleged that $2,500 added to plaintiff's salary at that time would have resulted in her being paid less than the retiring male County Chairman with less experience and fewer educational and other qualifications had earned at the time he was so employed and this was unlawful discrimination against the

plaintiff.

53

Hugh L. Liner advised plaintiff and Russell C. King that the new procedure which would be followed would be that the Board of Warren County Commissioners would interview each of the applicants and make its decision thereafter.

54

Hugh L. Liner further instructed plaintiff and Russell C. King to not go out and get people to come in to support them at the Commissioners' meeting, although Hugh L. Liner knew, or in the exercise of ordinary care he should have known, from the surreptious meeting he had attended in Louisburg, the letter to the editor, and other, that supporters of Russell L. King would likely attend the Commissioners' meeting and that an active campaign was underway for Russell C. King's appointment to the position.

55

Plaintiff followed these instructions of Hugh L. Liner meticulously and even to the point that when she was approached by several people who wanted to write letters and attend the Commissioners' meeting in support of her appointment, she asked them to not do so, in accordance with the instructions Hugh L. Liner had given from the beginning.

56

The Board of Warren County Commissioners met on April 5, 1982, and plaintiff is informed and believes and, therefore, alleges that a group of young farmers originally organized in large part by Russell C. King and who supported Russell C. King's appointment appeared before the County Commissioners to campaign in his behalf.

57

Plaintiff is informed and believes and, therefore, alleges that Hugh L. Liner

appeared before the Board of Warren County Commissioners to offer the endorsement of the North Carolina Agricultural Extension Service and North Carolina State University to the appointment of Russell C. King, and that when asked by the Commissioners about the ability of a woman to fill the role and the experience of the Extension Service with other female County Chairman that Hugh L. Liner failed to do all that was reasonably appropriate to advise the Board of County Commissioners that there was nothing related to gender which made one sex more qualified than the other sex to fulfill the duties of the County Chairmanship.

58

Plaintiff is further informed and believes and, therefore, alleges that Hugh L. Liner actually recommended Russell C. King in manner adverse to the plaintiff, and that the Commissioners actually selected Russell C. King as County

Chairman during their morning session and prior to their interviewing the plaintiff, and that the selection of Russell C. King by the Board of Commissioners was a foregone conclusion even before the meeting.

59

Plaintiff learned of the appointment of Russell C. King during the afternoon of April 5, 1982.

60

Plaintiff is informed and believes and, therefore, alleges that the fact that the plaintiff is a female, the fact that the plaintiff was 55 years old at the time, and the fact that political pressures then prevalent (1) to appoint a man, (2) to appoint a person under age 40, (3) to not appoint a woman, (4) to appoint Russell C. King as County Chairman, (5) the policies and practices of the defendants to appoint younger persons as County Chairman, and (6) the practice of

the defendants to favor males over females for the position of County Chairman were the bases upon which Russell C. King was given the position and the plaintiff was not given the position.

61

The North Carolina Agricultural Extension Service had an established grievance procedure in which the plaintiff had a vested interest as an employee of the North Carolina Agricultural Extension Service, which procedure was purportedly established to provide "for an adequate and fair hearing of grievances for each individual without regard to race, color, age, national origin, handicap, sex, or religion, where the grievance is based upon denial of equal employment opportunity or discrimination."

62

Plaintiff filed a grievance on April 30, 1982, in accordance with the established procedure.

63

A hearing on the grievance was scheduled to be conducted in accordance with the established grievance procedures on September 9, 1982.

A hearing was held on September 9, 1982. During the hearing testimony disclosed the fact that plaintiff's being a woman may have influenced the decision of the Commissioners to not appoint her, and that if plaintiff had been a male she would have likely received the appointment.

The hearing committee subsequently convened and issued the findings and recommendations contained in the attached document styled Exhibit E, which are hereby incorporated into and made a part of this complaint by reference.

64

When the findings were reviewed by Chester D. Black, he ordered the hearing committee to reconvene and reconsider the

matter.

65

The hearing committee so reconvened on October 18, 1982, and the findings of the committee are contained in the document styled Exhibit F, which is hereby incorporated into and made a part of this record by reference.

66

In each instance, the findings were highly favorable to plaintiff and highly unfavorable to the North Carolina Agricultural Extension Service.

67

On September 21, 1982, plaintiff filed charges of discrimination with the Employment Security Opportunity Commission.

68

On or about November 23, 1982, plaintiff received a performance evaluation purportedly based on her performance for a period from October 1,

1981, to September 24, 1982.

The performance evaluation was made by Russell C. King and covered a period of from October 1, 1981, through April 30, 1982, during which Russell C. King was not County Chairman nor the plaintiff's supervisor.

The performance rating, upon which salary increases are based, was the worst performance evaluation plaintiff had received in her 33 years with the North Carolina Agricultural Extension Service, and was grossly unfair to the plaintiff. This was discrimination against the plaintiff.

Plaintiff is informed and believes and, therefore, alleges that the lowered performance rating was a retaliatory act on the part of the defendants for plaintiff's having filed a grievance and having filed discrimination charges and notice of intent to sue with the Equal Employment Opportunity Commission and that

such retaliation was violative of 29 USC 623(d), 42 USC 2000e-3(a), and other.

Plaintiff deserved a better performance rating than that which was given to her.

69

Plaintiff sought redress for the poor performance rating from her District Chairman, Hugh L. Liner, and was given no satisfaction.

70

Plaintiff is informed and believes and, therefore, alleges that she has been discriminated against due to her sex, age, and otherwise in violation of 42 USC 2000e-2(a)(1), 42 USC 2000e-2(a)(2), 29 USC 623(a)(1), 29 USC 623(a)(2), 29 USC 623(d), 42 USC 1983, 42 USC 1985, and otherwise as set forth in this complaint.

71

Plaintiff is informed and believes and, therefore, alleges that:

a. Defendants discriminate against

females as a class, and discriminated against this plaintiff in particular, in their promotion practices and procedures, in violation of Title VII of the Civil Rights Act of 1964, as amended.

b. Defendants discriminate against persons who are over 40 years and less than 69 years of age, and discriminated against this 55 year old plaintiff, in particular, in their promotion practices and procedures, in violation of 29 USC 623(a)(1), 29 USC 623(a)(2), 29 USC 623(d), 29 USC 216(b) and 29 USC 217.

c. Defendants discriminate against persons who apply for promotions, and this plaintiff in particular, by conspiring to and actually undermining the stated and established procedures the

defendants have created in an effort to ensure that only those persons whom the defendants subjectively prefer for the positions are selected for the positions.

d. Defendants acting under color of state and local authority violated plaintiff's rights guaranteed by the Constitution of the State of North Carolina (particularly, but not limited to Article I, Section 19), the Constitution of the United States of America (particularly, but not limited to Article I, Section 10, Article VI, Section 2, and the due process and equal protection provisions of the Fourteenth Amendment) and laws designed for the protection of those persons as the plaintiff (particularly, but not limited to 42 USC 2000e

et sequentia, 29 USC 623 et sequentia, 29 USC 216 et sequentia, 29 USC 217, 42 USC 1983, and 42 USC 1985).

72

As a proximate result of the acts of the defendants as alleged herein and otherwise, plaintiff has sustained damages including, but in nowise limited to:

a. Plaintiff was denied the promotion to which she was entitled.

b. Plaintiff was denied the salary increase and increase in retirement fund contributions to which she was entitled and the increases in each since that she would have received.

c. Plaintiff has been victimized by the conspiracy and scheme of the defendants to prevent her receiving the promotion.

d. The acts of the defendants as

alleged herein have resulted in embarrassment and humiliation to the plaintiff and damage to plaintiff's standing in her profession and throughout the state. The acts of the defendants have caused plaintiff anxiety, mental anguish, and depression.

73

Plaintiff is entitled to have and recover of the defendants, and hereby seeks recovery from the defendants of, all rights, privileges, benefits, and income that she would have received but for defendants' unlawful and discriminatory practices, and she hereby seeks:

a. That she be appointed County Chairman of the Agricultural Extension Service for Warren County, retroactive to May 1, 1982, (or in the alternative that she be granted front pay and

benefits),

b. That she be awarded the pay differential between her present position and that of County Chairman retroactive to May 1, 1982,

c. That her personnel record be expunged of the poor performance rating given her on November 23, 1982, and any subsequent given unfair ratings and that she be properly and fairly evaluated, and

d. That her salary be appropriately increased, retroactive to November 23, 1982, based upon a reevaluation and proper assessment of her performance.

e. That defendants be ordered and directed to pay her attorney's fees and expenses incident to her efforts to redress the grievances imposed upon her by the

defendants.

Plaintiff is informed and believes and, therefore, alleges that the discriminatory and other acts alleged herein which acted to the detriment of the plaintiff were calculated, knowing, and wilful. Plaintiff is entitled to have and recover liquidated damages in addition to other damages requested herein.

SECOND CAUSE OF ACTION

Plaintiff, complaining of the defendants as a second cause of action, alleges:

1 through 73

Paragraphs 1 through 73 of the first cause of action are hereby incorporated by reference into this cause of action as paragraphs 1 through 73.

74

Plaintiff is informed and believes and, therefore, alleges that she was obviously the more qualified applicant for the position and that this fact was known

to the defendants.

75

Plaintiff is informed and believes and, therefore, alleges that defendants North Carolina Agricultural Extension Service, North Carolina State University, Hugh L. Liner, Chester D. Black, and Paul E. Dew anticipated that if plaintiff were not recommended for the position that she would file a discrimination charge and that these defendants set about formulating a scheme and plan by which they could attempt to avoid responsibility for the plaintiff's not getting the position of County Chairman.

76

Pursuant to this scheme, plaintiff is informed and believes and, therefore, alleges that the North Carolina Agricultural Extension Service's, North Carolina States University's, Hugh L. Liner's, Chester D. Black's, and Paul E. Dew's "recommendation" of plaintiff to the

Board of Warren County Commissioners was merely ceremonial and done for the purpose of attempting to avoid their responsibility for plaintiff's not receiving the appointment.

77

Plaintiff is informed and believes and, therefore, alleges that Hugh L. Liner, Chester D. Black, and Paul E. Dew, in fact, plotted, schemed, and conspired with Russell C. King and members and representative of the young farmer's organization Russell C. King had been instrumental in organizing to launch a campaign to see that Russell C. King was granted the appointment. To assure that this result was achieved, these defendants, pursuant to their common scheme and conspiracy, prevented the plaintiff and her supporters from encouraging the appointment of the plaintiff to the position, recommended Russell C. King for the position, and set

about seeing that he was appointed to the position of County Chairman by the County Commissioners.

78

Plaintiff is informed and believes and, therefore, alleges that Hugh L. Liner, Chester D. Black, and Paul E. Dew, pursuant to their scheme and conspiracy, failed to fully advise Warren County, the Board of County Commissioners, and each of the named Commissioners that plaintiff was more qualified for the job, that the job required no skills unique to men, and that the performance of the few women who had been granted the position in other counties was equal to, if not superior to, that of their male counterparts.

79

Plaintiff is informed and believes and, therefore, alleges that Hugh L. Liner, Chester D. Black, and Paul E. Dew failed to apprise Warren County, the Board of County Commissioners, and each Warren

County Commissioner that plaintiff had been restrained by these defendants from having her supporters express their support for her appointment to the position under intimidation of subordination. Plaintiff is informed and believes and, therefore, alleges that Glenwood Newsome, the Board of Warren County Commissioners, Warren County, and each of the named commissioners had been extensively "lobbyed" by supporters of Russell C. King. The failure of the North Carolina Agricultural Extension Service, North Carolina State University, Hugh L. Liner, Chester D. Black, and Paul E. Dew to so advise Warren County, the Board of Warren County Commissioners, Glenwood Newsome, and the named commissioners that restraints had been placed on plaintiff and her supporters thus fostered the erroneous conclusion on the part of Warren County, the Board of Warren County Commissioners, and each named commissioner

that there was little or no local support for plaintiff and much support for Russell C. King

80

Under the "Memorandum of Understanding" the North Carolina Agricultural Extension Service and North Carolina State University and their agents, servants, and employees, assumed the responsibilities for affirmative action and Equal Employment Opportunites.

81

It was the duty and responsibility of these defendants to guide the Board of Warren County Commissioners in these matters.

82

A proper guidance of the County Commissioners by these defendants would have resulted in a single recommendation of plaintiff for the position and plaintiff is informed and believes and, therefore, alleges that she would have

been "approved" for the appointment in accordance with procedures set forth in the "Memorandum of Understanding." However, such was not consistent with the scheme and conspiracy of these defendants.

83

Plaintiff is informed and believes and, therefore, alleges that the Board of Warren County Commissioners, Warren County, Glenwood Newsome the County Manager, and each of the defendants who were Warren County Commissioners at the time of the acts alleged herein joined the conspiracy of the other named and unnamed co-conspirators and that they knowingly and wilfully based their decision on knowingly and wilfully wrong and unlawful considerations of sex, age, political pressures, and other and that they "went along with" the other named and unnamed co-conspirators in in causing Russell C. King to be appointed County Chairman and for plaintiff to not so be appointed

County Chairman.

84

As a proximate result of the conspiracy of the defendants, plaintiff was not granted the position of County Chairman, plaintiff has been deprived of the benefits the position would have carried, plaintiff has suffered embarrassment, humiliation, damage to her professional standing throughout the state, anxiety, mental anguish, and depression.

85

The acts of these defendants, in the manner alleged herein and otherwise, are so outrageous as to warrant an award of punitive damages.

THIRD CAUSE OF ACTION

Plaintiff, complaining of the defendants as a third cause of action alleges:

1 through 85

Paragraphs 1 through 85 of the plaintiff's second cause of action are hereby incorporated into and made a part of this cause of action by reference.

86

Defendants, and each of them, at all times alleged herein, acted under color of statute, ordinance, regulation, custom, and usage of the state while subjecting the plaintiff to the deprivation of rights, privileges, and immunities secured unto her by the Constitution of the United States, by 42 USC 2000e-2(a), 29 USC 623(a), 29 USC 623(d), and other as set forth in this complaint.

87

As a proximate result of the acts of the defendants as alleged herein, plaintiff has sustained damages including loss of the privileges and benefits which accompany the position of County Chairman, loss of salary and wages the plaintiff

would have received but for the acts of the defendants, damage to plaintiff's reputation and standing in the community, embarrassment, anxiety, mental anguish, depression, and other damages.

88

The actions of the defendants as alleged herein and otherwise were willful, were knowingly wrong, and are such as to warrant an award of punitive damages to the plaintiff.

89

Plaintiff has incurred legal expenses and attorney's fees and anticipates incurring additional such charges for which she is entitled to reimbursement, and she hereby so prays for her expenses and attorney's fees.

FOURTH CAUSE OF ACTION

Plaintiff, complaining of the defendants as a fourth cause of action, alleges:

1 through 73

Paragraphs 1 through 73 of the first cause of action are hereby incorporated by reference into this cause of action as paragraphs 1 through 73.

74 through 84

Paragraphs 74 through 84 of the second cause of action are hereby incorporated by reference into this cause of action as paragraphs 74 through 84.

85 through 89

Paragraphs 85 through 89 of the third cause of action are hereby incorporated by reference into this cayse of action as paragraphs 85 through 89.

90

The plaintiff and the defendants North Carolina Agricultural Extension Service, North Carolina State University, Warren County, and Board of Warren County Commissioners entered into agreements and contracts of employment whereby the plaintiff would work for the defendants

North Carolina Agricultural Extension Service, North Carolina State University, Warren County, and Board of Warren County Commissioners under certain terms and conditions including, but in nowise limited to, equal opportunities for women and persons between 40 and 69 years of age as contrasted with persons of other ages, equal opportunities for females as contrasted with males, equal opportunities for white persons as contrasted with black persons, and due process and "fair play" in promotions and appointments to positions.

91

The plaintiff has at all times done and performed all of the stipulations, conditions, and agreements provided by the contract to be performed on her part at the time and in the manner provided by the contract. The plaintiff has ever been and still is ready and willing to perform the agreements and contracts on her part.

92

The defendants North Carolina Agricultural Extension Service, North Carolina State University, Warren County, and Board of Warren County Commissioners have failed and refused and still fail and refuse to perform the agreements and contracts on their part.

93

By reason of the breach of the contract by the defendants, North Carolina Agricultural Extension Service, North Carolina State University, Warren County, and the Board of Warren County Commissioners the plaintiff has suffered damages and has been damaged in the sum of $200,000, no part of which has been paid.

WHEREFORE, plaintiff prays the court that a jury be empanelled to try the issues and that plaintiff have and recover of the defendants and each of them, jointly and severally:

1. That the Court declare

plaintiff's rights under the circumstances and conditions alleged in the first cause of action and issue orders to secure these rights to the plaintiff.

2. That the Court issue a permanent injunction barring the defendants from engaging in the discriminatory practices alleged.

3. That the plaintiff be forthwith given the position of Warren County Extension Chairman, retroactive to May 1, 1982, and that the plaintiff be made whole for all salary, benefits, and other which she would have and all she should have received in her position as County Chairman but for the discriminatory practices of the defendants.

4. In the alternative to plaintiff's being given the position of Warren County Extension Chairman,

retroactive to May 1, 1982, that the plaintiff be awarded back pay, front pay, increment pay increases, and other benefits equal to those to which she would have been, should have been, and would be entitled as the Warren County Extension Chairman.

5. That the plaintiff be awarded liquidated damages in the sum determined by the Court to be appropriate under the circumstances of this case and not less than $200,000.

6. That the plaintiff have and recover of the defendants the sum of $200,000 damages for damage to reputation and standing, embarrassment, humiliation, anxiety, mental anguish and depression, as alleged in the first cause of action.

7. That the plaintiff have and

recover of the defendants $200,000 actual damages for damages to the plaintiff from the conspiracy of the defendants as alleged in the second cause of action.

8. That plaintiff have and recover of the defendants $1,000,000 punitive damages for conspiracy as alleged in the second cause of action.

9. That plaintiff have and recover of the defendants and each of them $200,000 actual damages for violation of plaintiff's rights secured by the Constitutions of the United States, the State of North Carolina, and laws of the land as alleged in plaintiff's third cause of action.

10. That plaintiff have and recover of the defendants and each of them $1,000,000 punitive damages

for matters and things alleged in plaintiff's third cause of action.

11. That plaintiff have and recover of the defendants North Carolina Agricultural Extension Service, North Carolina State University, Warren County, and Board of Warren County Commissioners $200,000 damages for breach of contract as set forth in the fourth cause of action.

12. That the plaintiff have and recover of each of the defendants, and that defendants be required to pay, $2,000,000 punitive and exemplary damages.

13. That plaintiff have and recover of the defendants attorneys' fees and the costs and expenses of this action, including reasonable attorneys' fees.

14. That plaintiff have and recover

of the defendants other relief as prayed for in the complaint and such other and further relief as to the court may seem just and proper.

This the 8th day of March, 1984.

s/MAX D. BALLINGER
Attorney for Plaintiff

OF COUNSEL:

Max D. Ballinger
Attorney and Counsellor at Law
Post Office Box 8104
Greensboro, North Carolina 27419-8104
919/294-3387

Complaint duly verified by
Emily Ruth Ballinger

March 8, 1984

Defendant's Exhibit 1, at the

Deposition of Emily R. Ballinger

Filed with the Court on April 1, 1985

IN MATTER OF:

Grievance Filed By:

EMILY R. BALLINGER

Before the

Grievance Committee

North Carolina Agricultural Extension

Service

June, 1982

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Supreme Court, U.S.
FILED
JUL 7 1987
JOSEPH F. SPANIOL, JR.
CLERK

87-279

No. _____

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In the

Supreme Court of the United States

October Term, 1987

****

EMILY RUTH BALLINGER,

Petitioner,

vs.

NORTH CAROLINA AGRICULTURAL EXTENSION SERVICE, et al.,

Respondents.

****

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

VOLUME II OF III

****

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IN MATTER OF:

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Before the

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June, 1982

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INTRODUCTION AND SUMMARY

By way of introduction, my name is Emily R. Ballinger. ia m female, white, and 55 years old. I have been a Home Economics Extension Agent with the North Carolina Agricultural Extension Service for over 33 years.

During most of my 33 years with the Extension Service, I have served in Warren County, North Carolina.

In the Spring of 1979, there was an announcement that a vacancy would shortly exist in the position of County Chairman for Warren County by reason of the retirement of the then current County Chairman of the Extension Service. Interested applicants were to submit applications by a certain date.

I followed all of the appropriate application procedures, and had an interview with a committee consisting of Doctor Carlton Blalock, Doctor Chester Black, and Doctor Paul Dew.

After the interview, the committee was to make a recommendation to the Warren County Commissioners for their approval of a new County Chairman.

My competition for the position at that time was Mr. L. C. Cooper, a black, male, a few years older than I.

By all of the usual yardsticks for deciding who should fill the position, I was a superior applicant to Mr. Cooper. I had more years of service and comparable service with the Extension Service than did Mr. Cooper. I had Master's Degree, a recommended requirement for the position, and Mr. Cooper did not. I had a superior record of performance to Mr. Cooper. However, Mr. Cooper was given the position.

The factors which ultimately resulted in Mr. Cooper's getting the job were that he was a male, ad he was black. Warren County's black population is approximately 64 percent.

The filling of the vacancy came at a sensitive time since several blacks within the Extension Service had filed a discrimination suit against the Extension Service in Federal Court and the lawsuit was pending.

I was thus victimized by a form of reverse discrimination and not given the job, I respectfully contend, because I was not black and because I was not male.

On February 25, 1982, I saw for the first time a copy of a staff vacancy sheet which announced that the position of County Chairman for Warren County would again be vacant in that Mr. L. C. Cooper was retiring and that applications should be made before March 15, 1982. Further instructions were that individuals interested in applying for the position should contact their District Chairman before contacting Doctor Dew.

On March 1, 1982, Doctor Hugh Liner (District Chairman for my district) came

to the county and met with the Extension staff. He said there was to be a vacancy on the staff but he did not want the applicants to get people to write letters on their behalf and that he did not want campaigning. He further stated that the state would make a decision and present it to the county commissioners.

Following his comments, he stated that he would see any member of the staff who wished to speak with him. I wanted to speak with Dr. Liner and I did so speak with him expressing my desire to apply for the position of County Chairman.

Doctor Liner told me to write Doctor Dew a letter expressing my interest in the position.

On March 9, 1982, I wrote Doctor Dew and told him I would like to apply for the County Chairmanship.

A day or so following March 16, 1982, I received a letter from Doctor Dew dated March 16, 1982, setting an appointment for

me to come for an interview in Raleigh on March 23, 1982. I was instructed to bring five copies of my resume with me to the interview. I assume that all other applicants were given the same instructions.

At some time during March, 1982, Mr. Russell King came to my office and told me he was applying for the position as well. Mr. King told me that he had been concerned about it for several days and thought he should tell me. He said he planned to work in Warren County for a while and then he had some other plans. As I recall, I told him that the job was open for anyone to apply.

On March 23, 1982, I went to Raleigh for the scheduled interview. The essence of that interview is as follows:

EMILY R. BALLINGER

1982 Interview for the Position of

Warren County Extension Chairman

Date: Tuesday, March 23, 1982, 3:00 P.M.

Place: Room 108 Ricks Hall
North Carolina State University
Raleigh, North Carolina

Persons present: Emily R. Ballinger and the following Committee Members

Committee:

Doctor Chester D. Black
Associate Dean and Director,
Agricultural Extension Service
104 Ricks Hall Box 5157
North Carolina State University
Raleigh, North Carolina 27650

Doctor Paul E. Dew
Associate Director,
County Operations
110 Ricks Hall Box 5157
North Carolina State University
Raleigh, North Carolina 27650

Doctor Hugh L. Liner
District Chairman,
North Central District
307 Ricks Hall Box 5066
North Carolina State University
Raleigh, North Carolina 27650

Prior to starting the interview there was small talk about my having been in this same position three years ago. Also, that I was on a review committee prior to Doctor Black's being appointed Director and that I was on the other side.

Doctor Dew: Since we were here three years ago Emily, I would like to see what your ideas are about the program in Warren County.

Doctor Liner: (Observed that he was new on the committee and had only served since April 1979).

Doctor Black: From looking at this resume you are getting near or in the range of retirement. Why do you want the job of Extension Chairman with all the Headaches, etc? I'm not in any way suggesting you retire.

Emily Ballinger: I don't plan to retire any time soon. I applied for the position because I feel I am qualified for the job. I felt that I was qualified

three years ago and I feel I an mow. I like Extension and I would like to stay in Warren County and I would like the job of leadership of the County Extension Program. I know Warren County is an agricultural county and I am not trained in agriculture, my subject matter training being Home Economics. I think I could do the administrative work of the County Extension Chairman and with the a competent staff the Agricultural Agents could carry on the work in agriculture as they are now.

Doctor Black or Doctor Dew: What do you see so far as staff assignments are concerned in the Warren County program? As chairman I think you could handle the home economics program all right.

Emily Ballinger: Is Mr. Cooper's position going to be filled? Or will it be frozen? He has forestry, livestock and marketing as his responsibilities now and I think we need someone to take these. I

see Mr. King keeping his same areas of work.

In regard to the 4-H program, we may not need two full-time agents but keeping the two agents we have it might be difficult to change because of their subject matter training. I do not know in what field Mr. Koonce is trained but I do know that I one time several years ago he did some work in swine. If he is trained in this he might do some work in that. I just don't know about his training.

Mr. Woolard is not trained in agriculture. His training is in recreation, I think, so he would not be suitable for a subject matter area. Ideally, we should have a woman doing some 4-H work other than just assigned areas of responsibility but with the present staff that would be hard to do.

Doctor Dew: Suppose Mr. Koonce said he wanted to be the livestock agent.

Emily Ballinger: That might be easy

to settle the problem of 4-H but I do not know if he has livestock training.

Doctor Black: I don't think it is fair to the people of the county to take him without further concentrated training and put him in the livestock position.

Emily Ballinger: If the position (Mr. Cooper's) is frozen I have thought maybe there could be some work with Marshall Bowden in Vance County working in Warren, because I know he has worked closely with the Warren agents and Dairy farmers with DHIA.

Question (by whom I cannot remember): If you had a problem lets say with this new livestock agent and he did not want to cooperate with the county program what would you do?

Emily Ballinger: I would sit down with the individual and discuss the problem and try to work out the differences right there in the county. If we just could not get things worked out I

would call the District Chairman to come and discuss the problems with us and help iron them out.

Question (by whom I cannot remember): If you became chairman how would you go about working with your staff?

Emily Ballinger: I would sit with the entire staff and ask each member if he had suggestions for changes and improvements. That is not to say that I would necessarily adopt or follow the suggested changes but I would want to have their input into the program by hearing and listening to their suggestions.

Doctor Black: Suppose you did not get any, what would you do?

Emily Ballinger: I would talk with each member individually.

Question (by whom I cannot remember): How about your Extension Advisory Council. Where is Warren County on that?

Emily Ballinger: It has recently been reorganized. We met once recently

and have another council meeting planned to work on or discuss the budget.

As Extension Chairman I would work closely with this Council and also with the Board of County Commissioners in carrying out the Extension Program in Warren County.

Doctor Black: What kind of leadership style do you have?

Emily Ballinger: Democratic. I believe in letting others have input in the program.

Question (by whom I cannot remember): Suppose you became County Chairman and you received in the mail one morning a letter from the County Commissioners that they were closing out a position on your staff. What would you do?

Emily Ballinger: I would contact the Chairman of the Advisory Council and tell him and let the Advisory Council see what it could do to help get the position reinstated. I would also call Doctor

Liner (the District Chairman) and tell him what had happened. I would also talk with the Chairman of the Board of Commissioners.

Doctor Black: I like that answer.

Doctor Liner: There is something else that you may not know too much about which is the Memorandum of Understanding with the Commissioners and they can't actually do that. There is an agreement that they must discuss it with the state administration before something like that could be done.

Doctor Black: I still like her answer.

Doctor Dew: Any more questions? Emily, maybe you would like to ask some.

Emily Ballinger: When will the position be filled?

Answer: We hope to fill it on April 5, 1982. In light of the lawsuit that is pending, we have not heard from the judge yet. If there is a ruling from him that

says we can't fill it it should be done so the individual could work with Mr. Cooper the month prior to his leaving. (At some point during the interview they told me that there were three applicants for the position - Russell King, George Koonce, and Emily Ballinger).

Emily Ballinger: What is the salary for the position? If it has the headaches Doctor Black mentions, I just want to know if it is worth it.

Doctor Dew: I will give the standard answer. That will be worked out but it will be above your present salary. Enough to buy some aspirin.

Emily Ballinger: Well, good, I just wondered.

Doctor Dew: Are there any more questions?

Doctor Liner: Yes, I have one. If one of the other applicants gets the position, do you think you can work with him?

Emily Ballinger: I was asked that same question three years ago and my answer was yes and it still is yes. I want to continue working in Warren County and I hope I can work with whomever is Chairman.

When I completed my interview and left, Mr. King was waiting in the outer office for his interview.

Doctor Liner made notes all during the interview.

I will interject one note out of context here. I do not know whether Mr. King was given the same instructions as I with reference to bringing five copies of his resume. I certainly assume that he was. However, I know that either on his own initiative or upon the suggestion of someone in Raleigh, likely during his interview, that Mr. King was either advised to or did prepare a resume on March 30, 1982, a week after his interview, and I believe it was thereafter

sent to Raleigh. I further believe that there may have been representations on the resume which were not entirely candid as, for example, a representation that Mr. King was at that time a member of Warrenton Baptist Church, when, if fact, he merely attended the church.

On Wednesday, March 24, 1982, The Warren Record had a letter to the editor from Irvin Smith (a Warren County farmer and member of the County Advisory Council) that criticized all areas of the Warren County Extension program except the Crop Science Department (which was Mr. Russell King's area of responsibility). Mr. Irvin Smith represents agriculture on the advisory council and Mr. Russell King is the Associate Agricultural Extension Agent assigned to work with him. I have been in Warren County over thirty years, and this was the first time I had ever seen a letter to the editor critical of the Extension Program.

Prior to this letter to the editor's appearing, neither I nor any one else of whom I was aware knew that Mr. Smith had any complaints with the Extension program.

Since the letter was written, I would note that Mr. Smith has never once voiced a specific objection or concern over any phase of the Extension Program in which I am involved. However, his letter to the editor gave an entirely different impression and called up support, I felt, and I believe the reader would objectively conclude, for Mr. Russell King in his bid for the County Chairman position.

The text of the letter to the editor is as follows:

THE WARREN RECORD

LETTERS TO THE EDITOR

Wants to Stimulate Thought

To The Editor:

Warren County farmers, when was the last time you had any help from the Warren County Agricultural Extension Department? To paraphrase Mark Anthony: I come neither to praise the county extension department nor to criticize it. Instead, my intent is to stimulate thought and action toward some workable results.

If 10 full-time farmers were polled today, and if you omitted the crop science department, how many would say that they have received help from the extension service in the last several years? My opinion is that you would be hard-pressed to find more than two percent to answer in the affirmative.

Some advocates of the present system would reply that the Agricultural Extension Service exists for other reasons

and other people than just farmers. I have no personal problem accepting that dogma except for two little facts.

First, the farmers of Warren County produce over $25 million dollars worth of products each year; therefore, it seems reasonable to assume that the farmers should be entitled to the needed amount of extension help that other counties our size have.

Second, why out of a county agricultural salary budget of nearly $45,000, excluding state salaries, are Warren County farmers left without the quantity and quality help that is needed?

Are two 4H and two home economic agents needed in this county? In the past perhaps so but maybe not in the present. How much longer is our tax money going to pay for a dual system?

There are counties our size that have one agent in these departments. Is the bureaucracy or the farmers' needs the

crucial issue in the execution of our budget? Granted it would be nice to have everything, but somewhere down the road we must examine our program and demand an equitable return on our taxes. How can dual systems and unqualified agents be an equitable return? I personally would rather have less help than more help for the sake of status quo and higher taxes.

Mr. Farmer, do you realize that the decisions the county commissioners will make April 5 will affect us for the next several years? We, the farmers, have two alternatives concerning the vacancy of two positions in the extension service. One, the farmers can be apathetic to this situation and let Raleigh and the county commissioners, which, by the way, has only two farmers, decide the outcome for us. Two, the farmers can raise enough dust to the county commissioners that they will value and respond to the needs of the farmers in Warren County.

Mr. Farmer, now is the time to wake up and be counted. Do you want a chairperson who knows the needs of the farmers and is trained in agriculture, or one who will delegate authority from the office? Do you want a qualified livestock agent (livestock represents nearly $4 million dollars in revenue for Warren County) or one who simply balances the political spectrum? How can we be heard unless we speak out? A voice that is silent is a voice.

Remember, call your county commissioners and be at the courthouse on April 5. If you, the farmers, do not care enough about our extension service to voice your opinion, do not complain when a railroad job is put on us again.

Irvin D. Smith

On Thursday, March 25, 1982, Mr. L. C. Cooper (the Warren County Chairman at that time) came by to my office to discuss the article with me. Mr. Cooper was concerned that the article was a direct slap at me so far as the chairman position was concerned and that it had attacked the Extension Program so unfairly.

Mr. Cooper further indicated that he, Mr. Charles Hayes (Chairman of the Advisory Council), and Mr. Irvin Smith (the Author of the letter to the editor and a member of the Advisory Council) had travelled to and attended a meeting in Raleigh together quite recently and that Mr. Smith had not indicated that he had any of the feelings which he expressed in the letter to the editor.

Mr. Irvin Smith represents agriculture on the Advisory Council, and Mr. King is, and was, the Extension Agent who had contact with Mr. Smith since Mr. Cooper, Mr. Smith, and Mr. Hayes had

attended the meeting in Raleigh.

It was my feeling that someone on the staff of the Extension Service had made comments to Mr. Smith which induced him to write the letter to the editor.

Mr. Cooper was so concerned that he indicated that he was going to contact several people, including Mr. Charles Hayes and Mr. Jack Harris (Chairman of the Warren County Commissioners), and send a copy of the letter to Doctor Hugh Liner. Thereafter, Mr. Cooper called a staff meeting about the letter to the editor. During the staff meeting, Russell King's face was very red.

Mr. Cooper read the letter to the editor, expressed his concern about such a letter having been written, and pointed out the areas which were attacked and the one single area which was not attacked. He also listed the areas represented on the Advisory Council and the individuals on the staff working with these people:

Home Economics: Emily Ballinger; Mrs. Richard Holtzmann

4-H: Mr. Koonce; Mrs. Chris Holtzman

Community Resource Development: Miss Woods; Mr. John Hawkins

Agriculture: Mr. Russell King; Mr. Irvin Smith

Mr. Cooper further stated in the meeting that he had discussed the letter with Mr. Charles Hayes, Mr. Jack Harris, and that he had sent a copy of it to Doctor Liner.

Mr. Koonce was most upset over the letter and made several comments.

Miss Woods stated that she felt we had a good Home Economics staff, and she did not understand why Mr. Smith had attacked it.

Mr. King said he did not know why Irvin wrote the letter.

I observed that I felt the letter was an attack on me as an applicant for County

Extension Chairman.

On Monday, March 29, 1982, we had an Advisory Council meeting at which time the Extension Budget was discussed. Mr. Cooper asked Mr. Irvin Smith to comment about his letter to the editor. Mr. Charles Hayes commented that he was sorry that the matters in the letter could not have been taken up in council rather than sending it to a newspaper, although he recognized that a private citizen was free to do as he wished.

Mr. Smith's comment was he did not mean to hurt Russell (obviously, since the letter to the editor did not hurt Russell at all but praised his work and called on farmers to attend the Commissioners meeting, at which time the County Chairman would be selected to support an unnamed candidate whom almost every farmer knew to be Russell King), but Mr. Smith was concerned that we needed a livestock agent and that if he had discussed this in

Council, he would then not have been free to write what he wanted to, all of which is, of course, simply not the case.

Later on in the afternoon, Mr. Russell King buzzed me to tell me that Doctor Liner was on the telephone and wanted to talk with me. The purpose of the call was for Doctor Liner to arrange a time to meet with me and talk with me. I asked him if he had a copy of the letter to the editor. When he replied that he did, I expressed my concern that it was an attack on me. Doctor Liner said he had read the letter several times and that he did not feel it was an attack on me, but he was sorry it had been written because it did nothing to help Extension.

On Friday, April 2, 1982, Doctor Hugh Liner and Mr. Russell King came to my office. Doctor Liner closed the door and sat down and talked to the two of us, so, in Doctor Liner's words, "we would hear the same story."

Essentially, Doctor Liner said the following:

"I've just been by and talked with Mr. Harris."

"You know we have had a little change in administration and new people, etc. We are going to make a little change. We are going to recommend the two of you to the Board of Commissioners on Monday and let them decide."

"The salary will be $2,500 above your present salary. We are asking the commissioners to keep the same amount that they put in, so there will be no change, there which should be no problem.

"I'm coming down and going to the commissioners at 11:30 on Monday, then we will come over here to lunch and then that afternoon you will go individually to the board meeting (executive session) and be interviewed. Then they will make a motion and vote. One of you will be elected and one will not, and I'll come over here and

tell you. It would be easier if you were sitting there and heard the decision but if not, I'll come back and tell you. That is just one of the bad parts of my job."

"If you don't get it, don't think it is the end of the world, because it isn't. I applied for a job on campus just recently and didn't get it, but that is just the way things work."

"I just hope whichever one gets the job that we can work and put together a top Extension Program in Warren County, and you know it hasn't been what I would like for it to be and what it could be."

I again expressed my concern over the letter to the editor. Doctor Liner again turned it off lightly and made additional comments about what he felt the letter meant but asked that he not be repeated in that regard outside the room.

Doctor Liner then told us to have a pleasant weekend and not to go out and get people to come in to support us at the

commissioners meeting. (I would note here that I had been approached by several people in the county who knew I had applied for the position and who wanted to write letters in support of my application, but, consistent with the earlier instruction I had been given by Doctor Liner and these later instructions, I told the people not to write letters).

Doctor Liner further told us that it would be better not to discuss the selection of a new county chairman because of the Civil Rights lawsuit. As I recall, he indicated that an injunction had been filed to keep certain positions from being filled pending the termination of the litigation and that if the wrong people learned that the Warren County Chairmanship was going to be filled, an injunction might be secured and neither one of us would get the job.

On Monday, April 5, 1982, I worked all morning preparing lunch for the County

Commissioners, Advisory Council, and Extension Staff -- thirty people.

Doctor Liner came by and spoke to me -- left -- came back and spoke to me again, I suppose after going to the commissioners meeting.

Lunch was scheduled to be served at 12:30, but the commissioners were late and did not arrive until 12:50. When I went to eat after serving the plates and replenishing tea, etc., I missed Mr. Shearin (a county commissioner), and I asked where he was. Mr. Herbert Harris said that he had to go to another meeting.

After lunch, Mr. Cooper and Charles Hayes presented the Extension budget. The meeting adjourned.

Russell King was interviewed by the Commissioners first. Then Doctor Liner came for me to go to the Board meeting. Those present included:

Mr. W. J. Harris, chairman

Mr. Clyde Edwards

Mr. William T. Skinner, III

Mr. Glenwood Newsome, county manager

Doctor Hugh Liner, district extension chairman

Mr. Harris asked me several questions which they had typed out. Mr. Glenwood Newsome made some notes of my answers.

When the interview was over, Doctor Liner walked with me to the door and then returned to the room with the commissioners.

Later, Doctor Liner came to my office and told me Russell King had just been appointed County Chairman. I said very little, but I did ask if there were any special reason for Russell King's selection, to which Doctor Liner said no.

The following day, on April 6, 1982, Mr. Cooper and I had a conversation which, though seemingly unimportant at the time, is of significance. Mr. Cooper thanked me

for preparing lunch the previous day. I apologized because the broccoli was so done. I then asked why the commissioners had been so late coming. Mr. Cooper replied that Mr. Shearin had said they were deciding on the county chairman. I then observed that it had been my understanding that the chairman would be selected after we had been interviewed. Mr. Cooper responded that he was only telling me what Mr. Shearin had said. If the decision were actually made before the interviews, as Mr. Cooper indicated, then it was certainly contrary to what we had been told would be the procedure followed.

The record indicates that the decision concerning who would be county chairman was made in Raleigh, and that Doctor Liner come to the commissioners meeting April 5, 1982, to offer endorsement from Raleigh of Mr. King for the position, and that Doctor Liner guided and influenced the county commissioners

into approving Mr. King for the position.

The record also indicates that my fears concerning the letter to the editor of Mr. Irvin Smith were well founded since a group of young farmers appeared at the commissioners meeting to let their voices be heard. No one came in support of me because I had specifically instructed them not to come in accordance with, and respect of, Doctor Liner's instructions.

The local newspaper was (by Doctor Liner) provided with an article concerning Mr. King's selection as county chairman immediately following the commissioners meeting on the same day. A separate news article on the same day noted the attendance at the commissioners meeting of several young farmers, among other things. A copy of the newspaper articles are included with these papers.

In any event, whether Raleigh, Doctor Liner, the county commissioners, or others made the selection of the new county

chairman, I was treated unfairly and was discriminated against (1) as to the selection procedure; (2) on the basis of sex; and (3) on the basis of age.

I was the most qualified applicant for the position and more qualified than Mr. King. I did not get the job.

To my knowledge, in the entire history of the North Carolina Extension Service, there have only been six women ever to serve as county chairmen, and they currently serve in the counties of Tyrrell, Duplin, Alleghany, Rutherford, Stokes, and Washington. Of those six persons, four serve counties which are located in a district which has a woman as district chairman.

In the entire history of the Extension Service, there has never been a woman selected to serve as county chairman in the district in which Warren County is located, and the district over which Doctor Liner is chairman.

On April 30, 1982, I filed a grievance with the Grievance Coordinator. A copy of my Grievance is included in these papers.

By way of background information, my 33 plus years of service with the Extension Service has been characterized by hard work, accomplishment, and service to the counties in which I have lived and worked.

I have carried educational programs to all segments of the county.

I have worked extensively with adults in the Home Economics Educational program.

While it is not my current assignment to do organizational work with 4-H, I continue to work with the 4-H program in my areas of responsibility, in 4-H demonstrations, in county wide special programs, and with individuals on cumulative 4-H records.

We have an outstanding EFNEP program with four aides whom I supervise.

I have had years of training in program planning.

I have a basic overall knowledge of many areas of office management related to Extension.

I have farm background.

I have a basic interest in the Agricultural Extension program dating back to April, 1932, when I went to club meetings with my mother when the Guilford College Home Demonstration Club was organized.

I joined the 4-H Club when it was first organized in my school in 1938. I was eleven years old.

I was an active member attending all club meetings, carrying on projects, entering exhibits for competition, participating in dress revues. I was a state dress revue winner in 1944 and attended National 4-H Club Congress and participated in the National 4-H Dress Revue.

I have attended 4-H Club camp as a camper and as a counselor and as an agent. I have attended 4-H Club week in Raleigh as a club member and as an agent.

I am a member of, and past president of, the State 4-H Honor Club.

From the time I was eleven years old, I have known and appreciated first-hand, the enormous benefit that the Agricultural Extension Service has been to our society.

I grew up under conditions which could at best be described as modest. My mother was a person of good intelligence, but she had little formal schooling. She depended exclusively on the Extension Service for the training she received in preserving foods and other matters incident to running a farm household. The Extension Service is directly responsible for improving the quality of my life as a child and that of my family.

I saw work with the Extension Service as a way to share the benefits that the

Extension Program had brought to me and my family with others.

It is thus understandable that I always wanted to be an agent, and when I pursued my education to the university level, I embarked on a course of training which would enable me to be an agent.

Attempting to compare my qualifications for the position of county chairman with those of Mr. Russell King is not a pleasant task, nor an easy task, since I do not know everything there is to know about Mr. King. I know my own qualifications, and I know the representations Mr. King has made of his qualifications.

A comparison of our qualifications based on the knowledge I do have will be helpful to this committee in determining the merit of my complaint. After reviewing the attached, one is compelled to reach the conclusion that:

(1) If the rules of the application procedure had been followed,

(2) If the rules for the application procedure had been equally applied and enforced by the Extension Service and county commissioners,

(3) If the prescribed application procedure had been applied equally to both candidates,

(4) If the political element had been removed (as dictated by Doctor Liner),

(5) If the letter to the editor had not been written, and if the Extension Service (Doctor Liner) had not refused to act upon the letter and permitted me to do something to offset its impact upon the selection process by permitting my supporters to let their voices be heard,

(6) If I had been male, and

(7) If I had been under age 40,

then I would have been given the position based on the simple fact that I was the

more qualified applicant.

It should be noted that there is nothing about the duties of the county chairmanship which might mandate or suggest that a man is by reason of sex more capable of filling the job than a woman.

It should also be noted that there is nothing about the duties of the county chairmanship which might mandate or suggest that a person under 40 is by reason of age more capable of filling the job than someone of my age. Indeed, age and maturity should be assets for the job.

County chairmen have traditionally continued to assume the same duties they had as agents, or the same areas of responsibility, and to merely assume administrative duties. Knowledge which can only be gained by years of service with the Extension Service is the best possible way to prepare for the administrative duties which must be

assumed by a county chairman. I have over 33 years of such experience, as contrasted with Mr. King's two and one-half years or so with the Service.

That which follows then is an attempt on my part to compare each element of my qualifications with those of Mr. Russell King, based on the representations he made.

PERSONAL INFORMATION

Emily R. Ballinger

Age: 55

Sex: Female

Race: caucasion

Marital Status: Single

PERSONAL INFORMATION

Russell King

Age: 34

Sex: Male

Race: caucasion

Marital Status: Married; one child

EMILY RUTH BALLINGER

Education

Bachelor of Science - Home Economics (teacher training) May, 1948, Woman's College of the University of North Carolina, Greensboro, North Carolina (now UNC-G)

Academic Training Prior to Starting Master's Degree Program - Courses taken at North Carolina State University and the University of North Carolina at Greensboro

1954

Ag. Ext. 301 Extension Teaching Methods

Hort. Ext. 342 Landscape Gardening

Ag. Ext. 302 Information Media

1961

H. Ec. 586

Furnishings for Contemporary Living

Academic Training for Master's Degree - Courses taken at North Carolina State

University

ED 503 Extension Program Development

3 credit hours Grade A

ED 403 Family Economics

3 credit hours Grade A

ED 600 Theory of Organization and Administration of Adult Education I

3 credit hours Grade A

ED 601 Theory of Organization and Administration of Adult Education II

3 credit hours Grade A

ED 596 Top Problems in Adult Education

3 credit hours Grade A

Soc. 590 Applied Research

3 credit hours Grade A

Soc. 502 Society, Culture and Personality

3 credit hours Grade A

Soc. 501 Leadership

3 credit hours Grade A

ED 699 Research

3 credit hours Grade S

ED 699 Research

3 credit hours Grade S

ED 596 Top Problems in Adult Education

3 credit hours Grade S

Master of Education

May, 1971, North Carolina State University, Raleigh, North Carolina

EMILY RUTH BALLINGER

Education

Academic Training Beyond Master's Degree - Courses taken at North Carolina State University

ED 559 Learning Concepts and Theories Applied to Adult and Community College Education

Credit hours 3 Grade A

ED 538 Instructional Strategies in Adult and Community College Education

Credit hours 3 Grade CS

RUSSELL KING

Education

Bachelor of Science - Agricultural Education, 1973, North Carolina State University (Based on credits as a part-time student at the University of New Hampshire and North Carolina State University)

Master of Science - Supervision, 1975, Longwood College, Farmville, Virginia

Note: This is all the information I have available to me. I know nothing of the courses taken by Mr. King or his marks.

EMILY RUTH BALLINGER

In-Service Training

1982

4-H Clothing Project Material	8 hours
Pounds Away Follow-up Seminar	8 hours

1981

Employment of Temporary EFNEP 4-H aides 8 hours

Impact Assessment 8 hours

Swap Shop on Home Economics Programs 8 hours

Revised EFNEP Reporting System 8 hours

EFNEP - 4-H Progression into 4-H Clubs 8 hours

Multi-District Meeting - Impact Assessment 20 hours

Supervision and Management of EFNEP 16 hours

Coordination of Extension Programs 8 hours

Foods and Nutrition Update in 4-H 8 hours

Clothing Update 8 hours

Family Resource Management Update 8 hours

Swap Shop in Family Resource Management Programs 8 hours

State Conference General Discussion of Extension Programs 8 hours

1980

Estate Planning 8 hours

Extension Program Planning 8 hours

North Carolina State University Adult and Community College Alumni Renewal Seminar 8 hours

Swap Shop for Home Economic Programs 8 hours

1978

Farm and Home Accident Survey 8 hours

Annual Extension Conference - General Extension Work 24 hours

Clothing Potpourri 40 hours

Structural Changes of Extension Homemaker Organization 8 hours

Meet Program Leaders - Extension Programs 4 hours

1977

Aesthetics in Dress 40 hours

State Extension Conference - General Extension Information 40 hours

EFNEP Special Survey 8 hours

Management and Financial Counseling 8 hours

Food Conservation 8 hours

Consumer Math 8 hours

District EFNEP Analysis Meeting	8 hours
Rural Safety Council Meeting	8 hours
1976	
Data for Planning	8 hours
Selecting and Fitting Women's Pants Workshop	36 hours
Leadership Development	4 hours
The Later Years	8 hours
EFNEP Aide and Home Economics Extension Agent Training	8 hours
North Carolina State University Open House	8 hours
Furniture Refinishing	8 hours
1975	
State Extension Conference	24 hours
EFNEP Training	8 hours
4-H Clothing Camp	24 hours
Food Preservation	8 hours
4-H Television Series Mulligan Stew	8 hours
Health Rural Development Panel	8 hours
Nickels for Know How	8 hours
1974	

EFNEP Training	8 hours
Foods and Nutrition Training	8 hours
Home Management Training	8 hours
Clothing Training - Fitting	8 hours
Leadership Training workshop	24 hours
State Conference - General Extension Information	32 hours

1973

Home Management Training	8 hours
Economics Training	8 hours
Consumer in the Market Place	8 hours
Estate Planning	4 hours

1972

State conference - General Extension Information	32 hours
Foods Program Conference	8 hours
Reporting	8 hours
Trunk Refinishing	8 hours
Mulligan Stew - 4-H television series	8 hours
Tailoring	24 hours

1971

Program Planning	4 hours

State Conference - General Extension Information 24 hours

EFNEP Training 8 hours

Home Management Training 8 hours

4-H Clothing Program 8 hours

Advanced Clothing Construction Techniques 16 hours

Five-Year Plan in Family Living 8 hours

1970

Consumerama 70 8 hours

EFNEP Training 32 hours

Governors Conference on Children and Youth 8 hours

4-H Management and Electric Projects 8 hours

1969

Clothing Workshop 8 hours

Expanded Foods and Nutrition Program 32 hours

State Conference - General Extension Programs 16 hours

Consumer Competence - Management 8 hours

Flower Arranging 4 hours

EFNEP Nutrition Training	8 hours
Program of Work	8 hours
Consumer Competence - Clothing	8 hours

1968

4-H Home Management Materials and Programs	8 hours
Extension Programs - Training by District Agents	8 hours
4-H Clothing Materials and Programs	8 hours
State Extension Conference - General Extension Programs	31 hours
Frozen Foods	8 hours

1967

Getting the Most Out of Your Sewing Machine and Clothing Construction Techniques	16 hours
Mattress Construction Workshop	16 hours
Job Descriptions	8 hours
Refinishing Picture Frame	8 hours
Home Management Training	8 hours
State Conference - General Extension Programs	24 hours

4-H Record Keeping	8 hours
Program Planning	32 hours
Selection, Sewing and Care of New Fabrics	8 hours

1966

Nickels for Know How	4 hours
Drapery Construction	8 hours
State Conference - General Extension Programs	24 hours
Making Lamps	4 hours
Sources of Color Scheme	8 hours
Conference on Home Demonstration Organization	8 hours
Home Management	8 hours
4-H Club Program	24 hours

1965

Home Management	16 hours
Program Planning	16 hours
Window Treatments	16 hours
Small Electrical Appliance	8 hours
State Conference - General Extension Programs	24 hours
Wood Finishes	24 hours

4-H Workshop - Community Club Concept	8 hours
Extension Secretaries Training	8 hours
Newswriting	8 hours

1964

Refinishing Picture Frames	8 hours
Tailoring Workshop	40 hours
Recreation Training Workshop	4 hours
District Conference - General Extension Program	24 hours
Vegetable Judging (4-H) Program	24 hours
Home Management	8 hours
Clothing Workshop	8 hours
Newsletter Editing	8 hours

1963

Laundry Training School	24 hours
Music Workshop	8 hours
Public Relations Training School	8 hours
Home Furnishings - Furniture Market High Point	24 hours
Flower Arranging	4 hours
Family Living Workshop	40 hours

1962

Nutrition Workshop on Agricultural Yearbook	8 hours
Community Development Program Workshop	8 hours
Banking and Business Every Woman Should Know	8 hours
Tailoring	8 hours
4-H Clothing Program	4 hours
How to Organize and Conduct Series of Classes for Young Homemakers	8 hours
Care of Home Grounds and Use of Insecticides	8 hours
State Conference	32 hours
Craft Workshop - Italian Hemstitching	24 hours
Equipment for the Home	8 hours
Reaching New Audiences	8 hours

1961

Consumer Buying of Meats	8 hours
4-H Foods Program and Vegetable Use and Marketing	8 hours
Judging Quality in Crafts	8 hours
Music Workshop	8 hours

Program Planning	8 hours
Selection of Paint, Wall Finishes, and Wallpaper	8 hours
Pine Needle Craft	8 hours
Rug Making	8 hours
Research Tour of North Carolina State University	8 hours
Research Tour of the University of North Carolina at Greensboro	8 hours
Refinishing Furniture	8 hours
Kitchen Planning Workshop	8 hours
Use of New Patterns and Fitting	20 hours
Food Conservation Training School Quality Canning, Causes of Failure and Judging Canned Goods	16 hours
Community Development Programs	8 hours
Landscaping	8 hours
Craft Workshop -Fabric Stenciling	24 hours
Program of Work Conference	8 hours
Smocking Workshop	8 hours
Seafood Cookery	8 hours

1960

Social Security Training Meeting	8 hours

Hatmaking Workshop	16 hours
Savings and Investments and New Inheritance Tax Laws	8 hours
4-H Clothing Program	4 hours
4-H Foods and Nutrition Program	4 hours
Slip Cover Workshop	16 hours
Meat Cutting and Meat Preparation	8 hours
Program Planning	24 hours
Living with Others	8 hours
New Furniture from Old	8 hours
Housing	8 hours
Freezing Foods	8 hours

1959

Chair Caning	8 hours
Color Coordination	8 hours
Selection of Sweaters, Suits, and Coats	8 hours
Practical Hints for the Professional Look	4 hours
Tailoring	4 hours
Meals in Minutes	4 hours
4-H Foods Program	4 hours
Food Conservation	8 hours

4-H Health Programs	4 hours
Family Life Program with 4-Hers	4 hours
Furniture Selection	8 hours
Electrical Equipment for the Home	8 hours
Frozen Foods	8 hours
Preserve Making	4 hours
State Conference - General Extension Programs	32 hours
Window Hardware	4 hours
Care of Floors	4 hours
Landscaping	4 hours
Program Planning	16 hours
Re-upholstering Furniture	16 hours
Flower Arranging	4 hours
Communication Workshop	32 hours
Literacy Program	8 hours

1958

New Fabrics and Finishes	8 hours
4-H Dairy Foods Project	4 hours
4-H Health Program	4 hours
Music Training	8 hours
The Family Room	4 hours
4-H Room Improvement	4 hours

Familiar Foods in Fancy Fashion	4 hours
Landscaping	8 hours
United Nations and Citizenship Program	8 hours
Radio	8 hours
Job Descriptions	8 hours
Outlook	8 hours

1957

Patterns and 4-H Clothing Program	8 hours
Making the Most of Your Sewing Machine and Construction Techniques (Singer)	16 hours
Mind your Money Matters	4 hours
Analysis of 4-H Home Management Program	4 hours
4-H Foods Programs in Vegetable Production, Conservation and Marketing	4 hours
4-H Food Preparation Program	4 hours
Techniques of a Home Visit	4 hours
Fabrics and Color	4 hours
Food Conservation - Making Pickles	8 hours
The Farm Family Health Program	8 hours

Program Planning and Place of Work	20 hours
Remodeling	8 hours
1956	
Plan Your Home	4 hours
The Kitchen - The Heart of the Home	4 hours
Home Furnishings - Fabric	8 hours
Dairy Foods Demonstration	4 hours
4-H Clothing Program	4 hours
Making Hooked Rugs	4 hours
Corsage Making	4 hours
Outlook	8 hours
1955	
Television Training	8 hours
Family Life Training for 4-H Programs	4 hours
Food Conservation	8 hours
Home Furnishings	8 hours
Program Planning	24 hours
Frozen Foods	8 hours
1954	
Floor Maintenance	8 hours

Crafts: Tooled and Hammered Copper	8 hours
Radio	8 hours
Frozen Foods	8 hours
4-H Room Improvement	8 hours
Citizenship Training	8 hours
Making Lampshades	4 hours
Farm and Home Planning Workshop	8 hours
Landscaping	8 hours
Yeast Breads	4 hours
Curb Markets	4 hours
State Conference - General Extension Programs	24 hours
Housing Workshop	16 hours
Program Planning	16 hours

1953

Pictures in the Home	8 hours
Lighting in the Home	4 hours
Program Planning	8 hours
Children's Clothes	4 hours

1952

Program Planning	20 hours
Citizenship	8 hours
It's Smart to be Well Fed	8 hours

Teas and Receptions	4 hours
Floor Finishes	4 hours
Cornmeal Enrichment	4 hours
TOTAL HOURS OF IN-SERVICE TRAINING	2,912 hours

RUSSELL KING

In-Service Training

1982

Marketing Alternatives	32 hours
Plant Diseases	8 hours
1982 Crop Science Tobacco Technology workshop	511

1981

Tobacco Agent Training	32 hours
Integrated Pest Management	8 hours
4-H Programs	8 hours

1980

Herbicide Application	8 hours
Hedging Techniques	24 hours
Soybeans	8 hours
Tobacco Training	8 hours
Seed Training	16 hours

1979

Production Economics and Resource Development	16 hours
Field Crops	8 hours
Soybean Training	8 hours
Newswriting	8 hours
Flue-cured Tobacco	8 hours
Soils	8 hours
TOTAL HOURS OF IN-SERVICE TRAINING	208 hours

EMILY RUTH BALLINGER

Employment History

Home Economics Extension Agent, Warren County, Warrenton, North Carolina, September 1, 1951-present.

Areas of responsibility: Clothing; Family Resource Management; Foods and Nutrition and Liaison Agent for Extension Homemaker Program.

Supervise four EFNEP aides and have been responsible for this program since it was started in Warren County in 1969.

Throughout the years in Warren County, I have worked closely with the Extension Homemaker Program.

I have helped to organize Community Development Clubs in the county and worked very closely with that program for a few years.

Until about four years ago, I was assigned to spend one-fourth of my time with the 4-H program. Since then, I have continued to work with the youth program in my areas of responsibility.

Assistant Home Demonstration Agent, Forsyth County, Winston-Salem, North Carolina, September 1, 1948 - August 31, 1951.

Areas of responsibility: Worked with 4-H club and Home Demonstration Club Program.

Assisted in starting one of the first long range planning programs in the State -- "Forsyth Faces the Future" 1950-51.

Dietician at Roanoke Island Camp,

Inc., Manteo, North Carolina, June 1 - August 15, 1948.

Home Demonstration Trainee Agent, Caswell County, Yanceyville, North Carolina, June 1 - August 15, 1947.

Typesetter, Ruzicka Bookbinders, Greensboro, North Carolina May, 1943 - September 1944, summer and Christmas holiday work. Three years.

I completely financed my college education through four years at UNC-G.

RUSSELL KING

Employment History

Associate Agriculture Extension Agent, Warren County, North Carolina. September 1, 1979-present.

Areas of responsibility: Tobacco; Small Grain; Horticulture; Home Grounds Beautification; and Farm Opportunities Program.

Supervise one agriculture technician.

Agriculture Education Teacher,

Buckingham and Mecklenburg Counties, Virginia. 1973 - 1979.

United States Marine Corps, 1969 - 1971.

EMILY RUTH BALLINGER

Professional Activities

National Association of Extension Home Economists, member 1948 to present; Distinguished Service Committee, 1978; Attended 15 national meetings.

North Carolina Association of Extension Home Economists, member 1948 to present; youth chairman, four years; member, executive board, five years; treasurer, 1970; president elect, 1974; president, 1975; counselor, 1976; attended 32 State meetings.

District Association of Extension Home Economists, member, 1948 to present; youth chairman, eight years; Professional Improvement chairman, two years; vice chairman, 1957; chairman 1958; treasurer,

1969.

North Carolina Federation of Cooperative Extension Associations, member; executive board, 1975; treasurer, 1980.

American Home Economics Association, member, 1948 to present.

North Carolina Home Economics Association, member, 1948 to present; Program of Work Committee, 1976; membership committee, 1978 to 1979.

Epsilon Sigma Phi, member 1958 to present; analyst, 1966.

Phi Kappa Phi, member.

North Carolina Adult Education Association, member.

North Carolina State Fair, helped plan, assemble and put up six State Fair booths in 4-H, Community Development, and Home Economics departments.

Warren County Agricultural Fair Committee, served as head of Home Economics Department of Fair for 31 years.

County Agricultural Workers Council, vice-chairman, 1958; program chairman, 1958; nominating committee, one year; recreation committee, one year.

Forsyth County Home Economics Club, organizational committee.

Capitol Area Development Association, assisting in organizing four communities; presented programs.

Served as judge for numerous fairs in surrounding counties.

Served as judge for "Village of Yesteryear," North Carolina State Fair, 1981.

C.R.O.P., assisted in organizing county program, four years.

State 4-H Honor Club, president, 1960; member, member selection committee, 12 years; chairman of Northeastern District Honor Club Selection Committee, 1959; secretary, 1950; member of tapping committee, five years; member of nominating committee, two years; chairman

of committee to plan revision of selection of members; member of arrangements committee, two years.

Dairy Princess Contest, county chairman, two years; chaperon for district contest winner, one year.

Farm Home Week, attended 14 years.

Assisted Vocational Agricultural and Home Economics teachers by teaching recreation and food conservation classes.

Demonstrations given to civic and garden clubs in yard beautification, interior decorating, crafts, recreation, foods and nutrition, and clothing.

4-H Club Work:

Assisted 17 Warren County girls to further their educations by assisting them in applying for and securing Home Demonstration Club loans to attend college.

Assisted seven boys and girls who were recipients of educational scholarships in making their applications.

Six 4-H Alumni Recognition Nominees whom I have assisted have been State winners.

Twenty-five 4-Hers (boys and girls) with whom I have worked have been State project winners and have won trips to National 4-H Club Congress in Chicago.

Three 4-Hers who I have assisted have been State Project winners in projects that did not carry a trip.

Two 4-Hers who I have assisted have won trips to Danforth Camp.

Three 4-Hers (boys and girls) with whom I have worked have been national winners and have received scholarships.

I have coached seven State-winning 4-H demonstrations.

I have coached at least 25 district-winning demonstrations.

Served as member of the State 4-H Club Week Dress Revue Committee, three years.

Trained 4-H Club members and assisted

them in preparing and manning floats for parades.

IFYE Program:

Assisted in entertaining delegates from Japan and Finland.

Assisted assistant agent in presenting at least 35 programs on her trip to Finland.

Educational Travel:

I have promoted, organized, and conducted numerous educational tours for Warren County Extension Homemaker's Club Women.

Eastern District Handicraft Workshop, Co-chairman, 1959.

State Conference on Health and Safety.

RUSSELL KING

Professional Activities

Agricultural Extension Agent's Association, member.

North Carolina Young Farmer's

Steering Committee, member.

Warren County Young Farmer's Steering Committee, member.

Warren County Integrated Pest Management Association, organizer and advisor.

Warren County Small Vegetable Grower's Association, advisor.

Warren County Agricultural Fair Committee, member.

Buckingham County Young Farmer's Club, advisor, 1974-1977.

Mecklenburg County Young Farmer's Club, advisor, 1977-1979.

Piedmont Federation Advisor of Vocational Agricultural Teachers, 1978.

Buckingham County 4-H Small Engine coach, 1975-1977.

Buckingham County Food Cannery Supervisor, 1973-1977.

Buckingham County Adult Vocational Training Supervisor, 1973-1977.

Virginia Educational Association

District Delegate, 1973-1974.

EMILY R. BALLINGER

Religious and Civic Activities

First Lutheran Church, member.

University of North Carolina at Greensboro Alumni Association, member 1948 to present, Warren County chairman, one year.

University of North Carolina at Greensboro - Home Economics Alumni Association, member.

Farm Bureau, member 1951 to present; advisor for membership committee, four years.

Warren County Tuberculosis and Health Association, secretary, seven years.

Warren County Red Cross Board of Directors, secretary for five years; helped organize county in securing funds for five years.

American Cancer Society, Warren County Chapter, helped organize county in

fundraising for eight years.

Warren County Heart Fund, assisted with organizing county in securing funds for Heart Fund for two years.

Polio Fund of Warren County, assisted in organizing county in raising funds for five years.

Assisted local hospital in recruiting women in Warren County to take a practical nursing program. Thirty-two women completed the course which resulted in increasing the earning power of the women and gave the county badly needed trained practical nurses.

RUSSELL KING

Religious and Civic Activities

North Carolina State University Alumni Association, chairman, Warren County.

Warren County Baptist Church, member.

Bethel Methodist Church, assistant

organist, 1973-1977.

Jaycees, member, 1974-1976.

Park View High School Booster Club, member.

Buckingham Junior High School, assistant baseball coach, 1973-1975.

Buckingham Baseball League, umpire, 1973-1976.

EMILY RUTH BALLINGER

Honors

National Home Demonstration Agents Association Distinguished Service recognition, 1960.

Extension News, "We Salute"

Who's Who in America, 1976.

Invited to attend President's White House Conference in Knoxville, Tennessee, 1975.

4-H Honor Club.

4-H State Dress Revue winner and delegate to National 4-H Club Congress.

Recipient of Curved Bar in Girl Scout Program, formerly, Eagle Scout award.

RUSSELL KING

Honors

Outstanding Young Teacher of Mecklenburg County, Virginia, 1978.

Distinguished Service Award Nominee, Warren County, 1980.

THE WARREN RECORD
WEDNESDAY, APRIL 7, 1982

To Succeed L. C. Cooper

RUSSELL KING IS SELECTED WARREN EXTENSION CHAIRMAN

By Tom Byrd

Russell C. King has been named to succeed L. C. Cooper as Warren County Extension Chairman.

King's promotion was announced by Jack Harris, chairman of the Warren County Board of Commissioners, and Dr. Chester D. Black, director of the North Carolina Agricultural Extension Service, following approval by the board.

The promotion is effective May 1. Cooper plans to retire April 30 after a 30-year extension career, the last three of which has been as Warren Extension Chairman.

In recommending King to the board, District Extension Chairman Hugh Liner called him "innovative and hardworking."

"He has been accepted well by the

people of Warren County. He has shown a real hunger to stay up-to-date and to develop sound educational programs for farmers," Dr. Liner added.

King, 34, is an Associate Agricultural Agent on the Warren staff, a position he has held since September 1979. Prior to that he taught agriculture in Buckingham and Mecklenburg counties, Virginia, for six years and served for two years in the U.S. Marine Corps.

King has two college degrees: a B.S. in agricultural education from North Carolina State University and a M.S. in supervision and administration from Longwood College, Va. He has also received training in numerous agriculturally-related topics since joining the Extension Service.

His major responsibilities in Warren County have been in the crop production and marketing areas. He has helped to form a young farmer's organization and an

integrated pest management association. He serves as an advisor to the Small Vegetable Growers Association and is a member of the Agricultural Fair Committee.

King will continue his crop work as well as serve as chairman of the county extension staff, which does work in home economics, 4-H and community and rural development as well as agriculture.

Liner told the commissioners that the staff has a vacancy created by Cooper's retirement. "We feel that this vacancy should be filled by a good livestock agent, and this is the type of person for which we are now recruiting," Liner added.

THE WARREN RECORD
April 7, 1982

Farmers' Wishes Apparently Heard

A group of Warren County farmers who appeared before the commissioners Monday morning requesting that the next county agent employed for Warren County be one

trained in animal husbandry, apparently will get their requests granted.

Dr. Hugh Liner, District Extension Director, appeared before the commissioners in regard to a replacement for L.C. Cooper, who has resigned effective on April 30. He said that Cooper's replacement as county agent would be a person already trained in animal husbandry, and if one is not available in May that the appointment would be withheld until such agent could be found.

Farmers appearing before the board, pointing out the value of the farmer in feeding the world, and their contribution to Warren County and the need for a person trained in animal husbandry were Irvin Smith, Bill Bender, Jr., James Harris and William Brauer.

Document 2 Produced by Plaintiff
in Response to Defendants' Request
for
Production of Documents

Filed District Court April 30, 1985
September 13, 1982

Dr. Chester Black

Assoc. Dean and Director

N. C. Ag. Extension Service

104 Ricks Hall

N. C. S. U. CAMPUS

Dear Dr. Black:

The grievance hearing for Miss Emily Ballinger was conducted in Warrenton on September 9, 1982. The following is the conclusion and the recommendation of the hearing panel.

1) The evidence supported the allegation of discrimination based on sex and age.

2) Sex and age was a major factor in the decision as to who was hired as County Extension Chairman in Warren County. It was the opinion of the panel that the discrimination was not intentional on the

part of the Extension Administration. The panel felt that the Extension Administration was caught in the middle.

3) The panel recommended that the Administration sit down with Miss Ballinger and try to work out some compensation for Miss Ballinger, either in the form of monetary compensation and/or advancement in assignment or title that would be agreeable with Miss Ballinger.

The panel also recommended that in future cases where one of the candidates had superior qualifications over the other candidates, only one candidate be recommended to the County Board of Commissioners.

I have the taped recording of the proceedings if you want to hear them.

Sincerely,

s/ J. D. Dodson

Document 3, Produced by Plaintiff
in Response to Defendants' Request
for
Production of Documents

Filed District Court April 30, 1985

September 22, 1982
Bernice Harris
Martha Edmondson
Cynthia Watlington
Harold Lloyd

Dear Friends:

We appreciate your recent service as a member of the grievance panel convened by J. D. Dodson to hear the grievance of Emily Ballinger. This assignment was important to Miss Ballinger and to the Extension Service.

This is an extremely important hearing and the first that alleges discrimination by the Extension Service on the basis of sex and age. Your conclusions as forwarded to me by Mr. Dodson are broad in nature and lack the definitive specifics which the Extension Service needs in order to address this case. Therefore, I am asking Mr. Dodson

to reconvene the panel at your earliest convenience. All tapes and records from the testimony will be made available for your use. You are requested to review the testimony and determine if more definitive specifics of discrimination by the Extension Service can be identified. Bear in mind that our grievance procedure can only hold accountable the actions of our Extension Service and not the actions of other government bodies.

I want to thank you in advance for your assistance in this matter. We must strive to achieve fairness for all of our employees, and I appreciate very much your efforts in this regard. You perform a very valuable service to our organization.

Sincerely,

s/Chester D. Black
Associate Dean and Director

Document 4 Produced by Plaintiff
in Respones to Defendants' Request
for
Production of Documents

Filed District Court April 30, 1985

October 19, 1982

Dr. Chester Black

Associate Dean and Director

N. C. Agricultural Extension Service

104 Ricks Hall

N. C. S. U. CAMPUS

Dear Dr. Black:

The grievance hearing panel for the Emily Ballinger grievance reconvened in Louisburg, N. C. on October 18, 1982, at 10:00 a.m. All four members were present.

The following is a list of specific items that concerned the panel.

1. One of the basic reasons for the complaint was that two people were recommended rather than one. The panel recommends that in the future only the most qualified person be recommended to the commission.

2. The panel felt that the Extension Administration either knew or had a strong feeling as to who would be selected if both Emily and Russell were recommended to the commissioners. They felt that the recommendation of Emily was most likely an attempt by the Administration to prevent Emily from filing a grievance or at least to put the blame on the County Commissioners if there was a grievance filed. By recommending both people, the Administration avoided making a choice between the two individuals.

3. The fact that Russell King altered his resume, there was no evidence that Miss Ballinger was given an opportunity to update her resume could be interpreted to mean that the Administration had a preference for Mr. King.

4. The panel felt that the Warren County people thought that the Chairman had to be a man in order for them to have

a livestock agent. There was no evidence brought out that indicated that the Administration did anything to point out that this was not necessarily the case.

5. The Extension Administration should have recognized the fact that the meeting in Louisburg with a group of farmers would have been viewed as a pressure group. The panel felt that it may have been better judgement on the Administration's part to have not met with that group during the period of time that a Chairman was being selected.

6. Dr. Liner testified that he carried two news articles with him to Warren County on the date that the County Commissioners were meeting. One was to be released if Russell King was named County Chairman, and the other one if Miss Emily Ballinger was named County Chairman. However, the one pertaining to Miss Ballinger could not be produced. This left some doubt in the minds of the panel.

7. There was testimony to the fact that the Chairman of the County Commissioners had led Miss Ballinger to believe that he thought she would be the next County Extension Chairman by comments that he made to Miss Ballinger at a meeting in Raleigh that he attended. The Chairman of the County Commission also testified that he was surprised when Extension recommended two applicants for the position. This testimony plus the fact that George Koonce, who the panel felt met the minimum qualifications, was not recommended, led the panel to wonder if the Administration knew who would be selected and recommended Miss Ballinger to ward off a grievance by her.

8. The Administration should give some thought as to things that could be done to dispel the conception that a lot of county lay people seem to have that the duties of a County Chairman are such that a man needs to be the County Chairman.

9. The panel was concerned about the apparent fact that the Extension Administration had not prepared their case as well as they could have. This put them in a position of having to make a decision basically on facts presented by the grievant.

10. The panel wishes to express their appreciation for the fact that they are a part of an organization that provides its employees an opportunity to air their grievances without fear of reprisal or censorship.

If you have questions about these points, please let me know.

Sincerely,

/ J. D. Dodson, Extension
Management Information Specialist

Document 14 Produced by Plaintiff
in Respones to Defendants' Request
for
Production of Documents

Russell Kings' first Resume
Filed District Court April 30, 1985

Russell C. King

101 South Main Street

Warrenton, North Carolina 27589

Education

1975 - M. S. in Supervision and Administration, Longwood College, Farmville, Virginia

1973 - B. S. in Agricultural Education, North Carolina State University, Raleigh, North Carolina

1970 - Part-time student, University of New Hampshire, Durham, New Hampshire

In-Service Training

1979

Production Economics and Resource Development.....16 hours

Field Crops..... 8 hours

Soybean Training..... 8 hours

Newswriting..... 8 hours

Flue-Cured Tobacco..... 8 hours

Soils..... 8 hours

1980

Herbicide Application..... 8 hours

Hedging Techniques.....24 hours

Soybeans..... 8 hours

Tobacco Training..... 8 hours

Seed Training.....16 hours

1981

Tobacco Agent Training.....32 hours

Integrated Pest Management... 8 hours

4-H programs..... 8 hours

1982

Marketing Alternatives.....32 hours

Plant Diseases..... 8 hours

1982

Crop Science 511..... A

Work Experience

September, 1979 - present

Associate Agricultural Extension Agent, North Carolina Agricultural Extension Service, Warren County.

1973 - 1979 Agricultural

Education Teacher in Buckingham County, Virginia and Mecklenburg County, Virginia. Total teaching experience - six years and eight months.

1969 - 1971 Military duty in the United States Marine Corps, Durham, New Hampshire, two years.

Professional and Civic Activities

Agricultural Extension Agent's Association, member.

N. C. Young Farmer's Steering Committee, member.

N. C. State University Alumni Association, chairman, Warren County.

Warren County Young Farmer's Organization, advisor.

Warren Baptist Church, member.

Warren County Agricultural Fair Committee, member.

Warren County Small Vegetable Grower's Association, advisor.

Personal Information

Birth Date: January 12, 1948

Marital Status: Married with one child

Document 15 Produced by Plaintiff
in Response to Defendants' Second Request
for
Production of Documents

Russell King's Second Resume
Filed District Court April 30, 1985

March, 1982

Resume

Russell C. King

101 South Main Street

Warrenton, North Carolina 27589

Personal Information

Birth Date: January 12, 1948

Age: 34

Marital Status: Married with one child

Wife's name: Connie H. King

Son's name: Brandon R. King

Education

1975 - M. S. in Supervision and Administration, Longwood College, Farmville, Virginia.

1973 - B. S. in Agricultural

Education, North Carolina State University, Raleigh, North Carolina.

1970 - Part-time student, University of New Hampshire, Durham, New Hampshire.

In-Service Training

1969 - Administrative Training in Office Management, U. S. Marine Corps, Parris Island, South Carolina.

1979

Production Economics and Resource Development.....16 hours

Field Crops..... 8 hours

Soybean Training..... 8 hours

Newswriting..... 8 hours

Flue-Cured Tobacco..... 8 hours

Soils..... 8 hours

1980

Herbicide Application..... 8 hours

Hedging Techniques.....24 hours

Soybeans..... 8 hours

Tobacco Training..... 8 hours

Seed Training.....16 hours

1981

Tobacco Agent Training.....32 hours

Integrated Pest Management..... 8 hours

4-H Programs..... 8 hours

1982

Marketing Alternatives.....32 hours

Plant Diseases..... 8 hours

1982

Crop Science Tobacco Technology 511 A

Work Experience

September, 1979 - present

Associate Agricultural Extension Agent, North Carolina Agricultural Extension Service, Warren County.

1973 - 1979 Agricultural Education Teacher in Buckingham County, Virginia and Mecklenburg County, Virginia. Total teaching experience, six years and eight months.

1969 - 1971 Military duty in the United States Marine Corps, Durham, New Hampshire, two years. Administrative office work.

Professional Activities and

Accomplishments

Agricultural Extension Agent's Association, member.

N. C. Young Farmer's Steering Committee, member.

Warren County Young Farmer's Organization, organizer and advisor.

Warren County Integrated Pest Management Association, organizer and advisor.

Warren County Small Vegetable Grower's Association, advisor.

Warren County Agricultural Fair Committee, member.

Distinguished Service Award Nominee, Warren County, 1980.

Mecklenburg County Young Farmer Club Advisor, 1977 - 1972.

Piedmont Federation Advisor of Virginia Vocational Agriculture Teachers, 1978.

Buckingham County 4-H Small Engines Coach, 1975 - 1977.

Buckingham County Young Farmer Club Advisor, 1974 - 1977.

Outstanding Young Teacher of Mecklenburg County, Virginia, 1976.

Buckingham County Food Cannery Supervisor, 1973 - 1977.

Buckingham County Adult Vocational Training Supervisor, 1973 - 1977.

Virginia Education Association District Delegate, 1973 - 1974.

Civic Activities and Accomplishments

N. C. State University Alumni Association, chairman, Warren County.

Warrenton Baptist Church, member.

Assistant Organist, Bethel Methodist Church, 1973 - 1977.

Jaycee Member, 1974 - 1976.

Park View High School Booster Club, member.

Assistant Baseball Coach, Buckingham Junior High School, 1973 - 1975.

League Umpire for Buckingham Baseball League, 1973 - 1976.

Document 22 Produced by Plaintiff
in Response to Defendants' Request
for
Production of Documents
Equal Employment Guidelines
of
Extension Service
Filed District Court April 30, 1985

EQUAL EMPLOYMENT OPPORTUNITY

(For more information on this topic see the civil rights file in each county office, or contact J. D. Dodson, civil rights coordinator.)

(Title 7 - Agriculture, Subtitle A, Office of the Secretary, Part 18) It is an unlawful employment practice for an employer "to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex or national origin."

Some of the administrative guidelines established to implement the Civil Rights Acts of 1964 and 1972 are:

1. The search procedures used should assure equal opportunity for qualified candidates to be considered for appointment.

a. N. C. Extension Administration has determined that paraprofessionals should be recruited from within the county with a vacancy.

b. N. C. Extension Administration has determined that job announcements for secretarial positions should go to appropriate sources in the county and to contiguous counties to that county with the vacancy.

c. N. C. Extension Administration has determined that position announcements for agent positions shall be distributed to appropriate sources in contiguous states to North Carolina.

d. Position announcements for district and state level positions are distributed to a source list including agencies and institutions in all states.

2. Objective criteria shall be used in the screening and selection of candidates. Some of the following concepts should be considered in the selection process.

a. Do not arbitrarily select the candidate with a high volume of accomplishment when the specific requirements of the vacant position are entirely different.

b. Do not be misled that seniority by itself usually produces the top candidate.

c. Unrelated personality traits seldom produce valid evaluation criteria.

d. Insure that the selection criteria are not placing any highly-qualified group of minorities of women at a relative disadvantage.

e. Insofar as possible, position vacancies are to be filled at the level they occur by promotion from within the organization.

3. Personal interviews and evaluative techniques shall be used objectively and on a non-discriminatory basis.

4. The individuals responsible for seeking, screening, and selecting candidates should document that they have complied with administrative guidelines.

Document 23 Produced by Plaintiff
in Response to Defendants'
Request for Production of Documents

Filed District Court April 30, 1985

Box 663
Warrenton, North Carolina 27589
January 10, 1983

Doctor Hugh L. Liner
North Central District Extension Chairman
Box 5066
North Carolina State University
Raleigh, North Carolina 27650

Reference: Performance Review

Dear Doctor Liner:

I am still most concerned about some of the scores Mr. King gave me during my Performance Review on Tuesday, November 23, 1982. Based on the reasons he gave, I

think the scores are most unfair, and I would like to again note my thinking on some of them. I would also like for this letter to be placed with the Performance Review material maintained on me and I would like it filed as a addendum to the grievance I have heretofore filed.

To elaborate on the specific areas of my concern, I make the following observations:

8. Public Relations

b. Has effective working relationships with relevant groups.

Mr. King's score: 2 1/2

Ballinger Score: 5

Mr. King's comment on his scoring was that some people thought I was short with comments with some people when they wanted to enter exhibits at the County Fair.

Upon further questioning of Mr. King, he admitted that he based his assessment on a conversation he overheard in which a man was talking about some craft exhibits

he wanted to enter in the Home Economics Department. The person did not tell Mr. King and was, in fact, not talking to Mr. King. You will recall that I further asked Mr. King if he had checked to see what really happened so far as I was concerned. His answer was, "no."

It disturbs me greatly that I would be evaluated so low on the basis of an overheard, unfounded rumor which Mr. King made no effort to further investigate.

When I requested that you discuss my performance and cooperation as relates to the Fair with the President of the Warren County Fair Association and the Warren County Fair Manager, you indicated that you did not feel such was necessary. Nevertheless, you left the mark on my Performance Review which had been placed there by Mr. King. Please understand that I consider it necessary since the mark affects the way I am viewed by those in the Extension Service and also materially

affects the salary increases I receive or do not receive.

I would also like to bring to your attention that according to the dates on the Performance Review Guide, the review period covered by this latest review was from October 1, 1981, through September 30, 1982. The incident which Mr. King cited as forming the basis for the 2 1/2 score took place in September, 1981. Further the person whom Mr. King purportedly heard complain was an individual who wanted to exhibit a number of articles in the crafts areas of the Warren County Fair. This individual had spoken with several people connected with the Fair about his Exhibits before he ever spoke to me. In each instance, the individual had been told that each exhibitor could only exhibit one item in the Crafts' Department, a rule made by the Fair Committee. The individual was unhappy because he made and sold toy

furniture and the Fair would not permit him to display it for free in the Crafts' area. Ultimately, the individual was referred to me, and I explained that which he had already been told. I further explained to him that if he wanted to display his complete line that he should investigate the possibility of renting a commercial booth space, and that the fair director would be the proper party with whom to speak. I even went to the fair directors and requested that a commercial booth space be made available for the individual even though all of the booths had already been filled. As a result of my efforts, the individual did display his wares at the fair.

I feel the score that I was given by Mr. King was unfair in every respect and particularly since the incident upon which it is purportedly based took place prior to the evaluation period and months before Mr. King was made County Chairman.

9. Staff Relationships

a. Maintains effective working relationships with other staff members - county, area, and state.

Mr. King's Score: 2 1/2

Ballinger Score: 5

b. Contributes to the total "county team" efforts as appropriate.

Mr. King's Score: 3

Ballinger Score: 5

c. Deals with interpersonal problems and conflict situations in a professional manner.

Mr. King's Score: 2 1/2

Ballinger Score: 5

Mr. King's comment: "Needs to develop more positive attitude of fellow staff."

Note: He did not give any further explanation on what he meant. I have no idea what he means by this since so far as I know, I have worked with other staff members as the situations are appropriate.

Mr. King's comment: "Needs to take into consideration their point of view."

Note: He did not give any further explanation. I do not know when I have not carefully considered and taken into account the views of others.

Mr. King's comment: "Don't criticize fellow agents."

Note: He did not give any further explanation. I do not know what he is talking about.

Mr. King's comment: "Would not serve on Christmas Party Committee."

Note: His comment is simply untrue. Mr. King mentioned to me that he was considering having a committee to plan an office Christmas party and he wanted to know if I wanted to serve on the committee. My answer was, "If I am appointed, I will serve."

Mr. King's comment: "Mrs. Clark feels she has a negative attitude."

Note: In making this statement, Mr.

King was referring to a conference we had had with Mrs. Clark. The conference concerned an incident I felt I needed to discuss with Mrs. Clark, and Mr. King specifically asked that I not discuss it with her without Mr. King's being present. I respected his instructions. Mrs. Clark was not pleased about being called in for a conference and during the discussion cited some incidents which had occurred about which I had to talk with her as a part of my responsibility as EFNEP supervisor. Evidently, because she had to be corrected, she interpreted the correction as my having a negative attitude.

Mr. King's comment: "In a conference in my office, you said to me I showed my ignorance."

Note: This conference with Mr. King concerned an authorization which I had been denied. I had requested an authorization to attend the Executive

Board Meeting of the North Central District Extension Homemakers' Association in Raleigh. When I asked Mr. King about it, he said he did not know where it was, but he had talked with Doctor Liner and we were not supposed to get time and travel to attend meetings of the Association of Extension Home Economists, that we only got time, and the County Chairman could sign the authorization.

I explained to Mr. King that I understood that and knew that, but that my request was not to get time and travel to a meeting of the Association of Extension Home Economists, but was for time and travel to a board meeting of the North Central District Extension Homemakers Association Executive Board to which I was serving in advisory capacity and that on previous similar meetings, I had received time and travel authorization from Doctor Liner.

In response to my comments, Mr. King

said how about putting it in the county expense account now. I pointed out that this was an unnecessary expense to be added to an already low county travel budget.

Mr. King then said let's not send in another authorization, since I have talked with Doctor Liner about it, and I thought it was just a home agents meeting when I was talking to him. I didn't know it was a different meeting. (Note: I had given him the authorization, and he had signed it one time to be sent to Doctor Liner.)

As I recall, at that time I made the comment, "That was just a case of ignorance on your part." I would also observe that since the above-mentioned, I requested an authorization to attend another meeting of the North Central District Extension Homemakers Association. Again, Mr. King said he could give the authorization. Again, I had to explain to him that this was a meeting for which Dr.

Liner should give the authorization -- that it was an Extension Homemakers meeting and not an Association of Extension Home Economists meeting.

11. Office Management.

b. Keeps an up-to-date filing system for area(s) of responsibility.

Mr. King's Score: 2 1/2

Ballinger Score: 4

Mr. King's comment: "All agents' files need to be updated."

Note: I will admit that my files need to be gone through, but I feel the 2 1/2 score is too low.

12. Supervisory Performance (Agents working with paraprofessionals and volunteer staff).

b. Maintains climate for free and open communication.

Mr. King's Score: 3

Ballinger Score: 5

Mr. King's comment: "The aides feel intimidated by Miss Ballinger. They do

not feel free to talk to other staff members.

Note: I feel this is a most unfair assessment. I requested that Mr. King talk with the aides about purported feelings of intimidation with or without my being present, and if they felt I intimidated them, then I would accept this score without complaint. Otherwise, I was very opposed to it. Doctor Liner did not feel it was advisable to talk with them.

c. Counsels and guides efforts of staff as appropriate.

Mr. King's Score: 3

Ballinger Score: 5

Mr. King's comment: "Feels that Miss Ballinger needs to go with the aides more to visit homes. Does excellent with EFNEP overall."

Note: I admit that I do not go on field visits with the aides often because they tell me their families are very uncomfortable when another person is with

them, and that they (the aides) feel they do not have an effective working visit when someone is with them. When Doctor Liner indicated that he felt this was true, he further observed that he would like for each aide to have visits by the supervisory agent at least one time a year. I indicated that I would do this.

If Mr. King feels that I have an excellent overall EFNEP, I feel that 3 is too low to score me just because I have not made home visits with the aides as much as he thinks I should, particularly in light of the reasons I have not made the visits.

5. Program Implementation.

b. Seeks out new and expanding audience.

Mr. King's Score: 2 1/2

Ballinger Score: 4

Mr. King's comment: "Needs to seek out new audience."

Note: I made a special effort to offer programs for new audiences, but I

cannot determine whether or not individuals take advantage of the educational opportunities provided.

Among the new audiences I worked with during the past year are the following:

Snow Hill Church Group two meetings	25 people
Weight Control Classes	15 people
Women and the Law	25 new people
Afton Ruritan Club	12 people
Norlina Women's Club	15 people
World's Fair Educational Tour	34 new people

I also maintain an extensive mailing list, and I send notices to those on the list about special meetings and events. I also use the media (radio; newspaper) to publicize educational opportunities.

I feel that the score given by Mr. King is to low in light of the efforts I make as compared with other agents.

7. Response to Clients' Requests for Assistance.

c. Follows up with additional assistance and educational programs as needed.

Mr. King's Score: 3

Ballinger Score: 5

Mr. King's comment: "Needs to follow up better for young clients."

Doctor Liner's and Mr. King's comment: "No major problem, 3's average."

Note: I do not know of any incident when I have not followed through on requests for additional assistance with educational programs, visits, or materials when they have been requested of me.

I certainly make no distinction in the level of service to clients on the basis of age. I have always exerted above average effort on everything I undertake, and it is of no consolation to me that 3 is average, since I feel that my performance was above average.

6. Program Evaluation.

b. Gathers evidence of program results.

Mr. King's Score: 3

Ballinger Score: 4

c. Communicates results to appropriate groups.

Mr. King's Score: 3

Ballinger Score: 4

d. Assesses effectiveness of methods and resources.

Mr. King's Score: 3

Ballinger Score: 4

Note: Since it has been indicated that Mr.King considers 3 average, I feel this score is too low because my performance in these areas is above average.

I think that a performance review can be very helpful, provided it is based on an agent's overall performance. If a specific case is cited by the County Extension Chairman as being the reason for a low score, I think that chairman should at least ascertain that he has all of the relevant facts concerning the case in point before using the unverified

allegations as the basis of his evaluation on a performance report. It is my feeling that because of Mr. King's limited experience with the Extension Service, and even more limited experience as County Chairman, that he did not have a reference upon which to base his decisions, and that in many cases, he did not take into consideration the policies of the Agricultural Extension Program.

I feel that my performance during the period from October 1, 1981, through April 30, 1982, should have been evaluated by the County Chairman during that period of time, and not by Mr. King who was, during that period of time, neither County Chairman, my supervisor, nor even a full agent.

This is the worst performance review report I have had in the 34 years I have been with the Agricultural Extension Service. My reports heretofore have been good, and my scores, and those of those of

the reviewing county chairman, have usually agreed and been much closer than these on my 1981-82 Performance Review.

I feel that I have been unfairly rated low because I filed a grievance over my not being appointed Warren County Extension Chairman when Mr. King was selected. I also feel that your failure to take into consideration my comments with reference to the evaluation, and Mr. King's failure to correct the scores when faced with facts which disclosed his scores were in error, is indicative of a continuation of the discrimination to which I have been subjected and as reflected in the grievance I filed.

Sincerely,

s/Emily Ballinger

Home Economics Extension Agent

cc:

Mr. Russell King

County Extension Chairman

101 South Main Street

Warrenton, North Carolina 27589

RESPONSE OF
NORTH CAROLINA STATE UNIVERSITY
AND THE NORTH CAROLINA
AGRICULTURAL EXTENSION SERVICE
TO PLAINTIFF'S FIRST INTERROGATORIES

Filed District Court April 30, 1985

Plaintiff has served identical sets of interrogatories upon North Carolia State University and the North Carolina Agricultural Extension Service. The Agricultural Extension Service is a component of North Carolina State University. They jointly respond to plaintiff's interrogatories as follows:

1. Plaintiff's interrogatories are answered for and on behalf of North Carolina State University and the North Carolina Agricultural Extension Service by Chester D. Black, Associate Dean of the School of Agriculture and Life Sciences at North Carolina State University and Director of the North Carolina

Agricultural Extension Service. The information requested in subsections (a) through (i) of Interrogatory 1 is set forth in Attachment 1.

2. The Persons responsible for managing personnel functions within the North Carolina Agricultural Extension Service are its director, associate director, assistant director for county operations, and district extension chairmen. The persons occupying positions of director, associate director, and assistant director for county operations are involved in personnel matters from all districts within the State, and the information requested in subsections (a) through (g) of Interrogatory 2 for these persons is set forth in Attachment 2. In addition, the district chairman is involved in personnel decisions within his district, and the information requested in subsections (a) through (g) for the district chairman responsible for Warren

County is set forth in Attachment 2.

3. The information requested in Interrogatory 3 is set forth in the affirmative action plans for North Carolina State University for 1978-83 and 1983-86 which are appended as Attachments 3(a) and 3(b), respectively. These plans cover the employees of the Agricultural Extension Service who are located on the NCSU campus, but do not extend to the employees of the Agricultural Extension Service who work in the counties. These plans were developed pursuant to Executive Order 11246, and were recognized in the Consent Decree entered into between the University of North Carolina and the Federal Government.

4. Except as objected to, the personnel records maintained by the Agricultural Extension Service are described in Attachment 4. Included with Attachment 4 are blank copies of some personnel forms utilized by the

Agricultural Extension Service.

5. Except as objected to, the selection procedures for the position of county extension chairman used by the Agricultural Extension Service are described in Attachment 5(a). Attachment 5(b) describes the policies of the Agricultural Extension Service for the appointment, promotion, and tenure of county extension personnel in effect between 1971 and 1980 and Attachment 5(c) describes the policies in effect since February of 1980. Attachment 5(d) sets forth job descriptions for various positions within the Agricultural Extension Service.

6. See Attachments 5(b), 5(c) and 5(d).

7. See Attachments 5(b), 5(c) and 5(d).

8. Defendants do not contend that males are "uniquely or more qualified to serve as county chairmen than females."

9. The relationship between the Agricultural Extension Service, North Carolina State University and boards of county commissioners is described in the Memorandum of Understanding appended as Attachment 9(a), Attachment 9(b) is a copy of the executed Memorandum of Understanding entered into between the Agricultural Extension Service, North Carolina State University and the Warren County Board of Commissioners.

10. Except as objected to, see Attachments 5(a), 5(c) and 5(d).

11. The documents contained in Attachments 5(a), 5(b), 5(c) and 5(d) were not provided the Warren County Commissioners, though the contents of those documents were explained to the Warren County Commissioners.

12. The criteria applied by the Agricultural Extension Service in making recommendations regarding the appointment of county extension chairmen are

generally: (1) demonstrated leadership ability; (2) demonstrated administrative and management capabilities; (3) human relations and communications skills; (4) past performance; (5) length of service; and (6) educational qualifications and training.

Applying these criteria to the plaintiff and Russell King, the Agricultural Extension Service determined that both persons should be, and were in fact, recommended to the Warren County Commissioners for appointment as Warren County Extension Chairman. The plaintiff's strengths were the length of her service with the Agricultural Extension Service and her educational qualifications and training. Her weaknesses, especially as compared with Mr. King, were judged to relate to her demonstrated leadership ability, demonstrated administrative and management skills, human relations and communications

skills, and, in recent years, her work performance. By contrast, Mr. King's strengths were judged to be his demonstrated leadership ability, his demonstrated administrative and management capabilities, his human relations and communications skills, and his work performance. These strengths were tempered by his relatively short length of service with the Agricultural Extension Service.

In short, the plaintiff and Mr. King were judged to be sufficiently qualified for recommendation to the Warren County Commissioners, but for different reasons.

13. Defendants have objected to this interrogatory in its entirety.

14. The information requested in subsections (a) through (d) of Interrogatory 14 is set forth in Attachment 14, except that the last known address of the persons listed in Attachment 14 may be obtained from

directories in plaintiff's possession.

15. Except as objected to, the information requested in Interrogatory 15 is contained in Attachment 14.

16. Except as objected to, the information requested in Interrogatory 16 is contained in Attachment 14.

17. Except as objected to, the information requested in Interrogatory 17 is contained in Attachment 14.

18. Approximately 1300 persons are employed in the Agricultural Extension Service. Other than the plaintiff, no other employee in the Agricultural Extension Service has filed any age or sex discrimination grievance. Defendants have objected to the remainder of this interrogatory.

19. Russell King and the plaintiff were both advised that an increase of $2,500 would be made in the salary of the individual selected for the County Extension Chairman in Warren County. Both

were further advised that Warren County would contribute $7,000 toward the salary of the person selected.

20. Prior to May 1, 1982, Russell King's salary was $20,655. On May 1, 1982, his salary was increased to 23,155. In 1983 his salary was increased to $25,609 and in 1984 his salary was increased to $28,178.

21. Funding for the Agricultural Extension Service is described in Attachment 21.

Attachment 5a

Filed District Court April 30, 1985

SELECTION PROCEDURES FOR THE POSITION OF COUNTY EXTENSION CHAIRMAN

The position of County Extension Chairman is an important and highly visible position within the NCAES structure. It is not considered by NCAES to be in a promotional line with that of assistant, associate and full extension

agent. Rather, the County Chairmanship of a particular county is a position which must be specifically applied for when a vacancy occurs.

An individual is eligible for consideration for appointment as County Extension Chairman at such time as he or she has completed six years of service with the NCAES or equivalent experience. At least two years must have been in service with NCAES. A Master's degree is a desirable qualification but not mandatory. As with eligibility for title promotion, a Master's degree is worth one year of experience and a doctorate is worth two years. As the position of County Extension Chairman carries administrative and leadership responsibilities as well as a subject matter program work load, depending on the particular needs of the county, the position is one which requires serious consideration in selection of a qualified

candidate to present to the Board of County Commissioners. When it is known that a vacancy is going to occur, the District Extension Chairman meets with the Board of County Commissioner to discuss the particular subject matter needs and competencies required for the county extension chairman as reflected by the needs of the individual county. From this input, the District Chairman and state administrative staff prepare the vacancy announcement.

Since 1970, vacancy announcements of positions of county chairman are published by NCAES and circulated among the county staffs, and the mailing list utilized in recruitment of agents, some 26 institutions of higher learning. The announcement contains the county and the subject areas of responsibility which the county chairman must carry in addition to his or her administrative duties.

Applicants for the position of County

Extension Chairman must apply in writing and applicants must possess the minimum qualifications in terms of experience to be considered. The applicants are then screened to determine which applicants possess the appropriate subject matter experience required in the job and other minimum qualifications. Important factors utilized in selection of applicants to go through the interview process are subject matter expertise required in the county, demonstrated leadership in present and previous positions, demonstrated administrative and management capabilities, educational background and advanced training and human relations and communications skills.

In the event that the applicant is an agent from within the ranks of NCAES, his or her performance and ability in managing extension programs will be well known due to the extensive performance evaluation system utilized by NCAES in its promotion

and merit salary process. Applicants who possess the minimum qualifications and have developed the skills desired in the position of county chairman are interviewed.

To ensure fairness and an objective setting, the applicants are interviewed by the District Extension Chairman, the Assistant Director for County Operations, the Associate Director and Director of NCAES. This panel examines the credentials of the applicants for strengths and weaknesses and develops through consensus recommendations for the Board of Commissioners in the county where the vacancy is located.

The qualifications of the candidates and the desires of the specific Board of County Commissioners for interviews determines the number of applicants presented for local interviews. The interview schedule is developed in accordance with the Board of County

Commissioners' instructions. The Board of County Commissioners must concur where one applicant is presented and have the prerogative of selection where more than one candidate is presented.

Attachment 5(b)

Filed District Court April 30, 1985

NORTH CAROLINA
AGRICULTURAL EXTENSION SERVICE
APPOINTMENTS, PROMOTION, AND TENURE
OF COUNTY EXTENSION PERSONNEL

A. COUNTY EXTENSION AGENTS

The County Extension Agent is a member of the professional faculty of North Carolina State University. He has primary responsibility for planning, executing, and evaluating that phase of the total county Extension program within his assigned area(s) of program responsibility. He cooperates with his colleagues in the North Carolina Agricultural Extension Service and county leaders in performing his assigned

responsibility. The performance of his assigned responsibility is governed by philosophy, objectives, policies, and procedures of the N. C. Agricultural Extension Service.

1. Criteria for Appointment

a. All professional employees must meet the qualifications for the position of County Extension Agent as set forth in the Miscellaneous Extension Publication No. 48, "Job Description, N. C. Agricultural Extension Service," March 1969.

b. Acceptability as a graduate school candidate is desirable.

2. Procedures for Appointment

a. County Extension personnel appointments are to be made jointly by the N. C. Agricultural Extension Service and the Board of County Commissioners.

b. Final approval of all appointments is given by the director, N. C. Agricultural Extension Service.

3. Tenure and Promotion Policy

a. Notice of termination of an agent will be not less than thirty days except with the consent of the agent being terminated.

b. A master's degree may be substituted for one year of equivalent experience and a doctor's degree for two years of equivalent experience. Total credit for graduate degrees shall not exceed two years of equivalent experience.

Assistant Extension Agent

An assistant agent will be evaluated at the end of the first and second year of service. At the end of the first or second evaluation, depending on equivalent experience granted, it will be recommended that, either (1) the agent be promoted to associate Extension agent when all other qualifications are met, or (2) that the agent receive a terminating appointment of not more than six months, or (3) be reappointed as an assistant Extension

agent for a period of one year with the above requirement regarding promotion or termination.

Associate Extension Agent

An associate agent must have a minimum of three years with the N. C. Agricultural Extension Service or equivalent experience. An agent entering the N. C. Agricultural Extension Service at this rank will be evaluated annually. At the end of the second year of service as an associate Extension agent, depending on equivalent experience granted, it will be recommended that (1) the agent be promoted to the title of Extension agent when all qualifications are met, or (2) that the agent receive a terminating appointment of not more than six months, or (3) be reappointed as an associate Extension agent for a period of two years with the above requirements regarding promotion or termination applying at the end of the third year of service.

Extension Agent

An Extension agent must have a minimum of seven years with the N. C. Agricultural Extension Service or equivalent experience. Two years of this equivalent experience must have been with a state cooperative Extension service. An agent entering the N. C. Agricultural Extension Service at this rank will be evaluated annually. At the end of the second year of service as an Extension agent, it will be recommended that, either (1) the agent continue in his present rank as long as he maintains a satisfactory performance evaluation, or (2) the agent receive a terminating appointment of not more than six months.

B. COUNTY EXTENSION CHAIRMAN

The county Extension chairman is a member of the professional faculty of North Carolina State University. The major responsibility of this job is to provide leadership for, and coordinate the

efforts of, the Extension staff in developing an effective total Extension program. Other responsibilities include organizing and allocating resources, preparing budgets, maintaining administrative relationships, interpreting and communicating policy, teaching, evaluating, and reporting in his assigned county.

1. Criteria For Appointment

a. An individual must meet the qualifications of the county Extension chairman as set forth in the Miscellaneous Publication No. 48, "Job Description, North Carolina Agricultural Extension Service," March 1969.

b. A minimum of seven years with the N. C. Agricultural Extension Service or equivalent experience. Two years of this equivalent experience must have been with a state cooperative Extension service. A master's degree may be substituted for one year of equivalent experience and a

doctor's degree for two years of equivalent experience. Total credit for graduate degrees shall not exceed two years of equivalent experience.

2. Procedures For Appointment

a. County Extension chairmen appointments are to be jointly by the N. C. Agricultural Extension Service and the Board of County Commissioners.

b. Final approval of all appointments is given by the director, N. C. Agricultural Extension Service.

3. Tenure Policy

a. A chairman will be evaluated annually and must maintain a satisfactory performance evaluation record.

b. Notice of termination of a chairman will not be less than thirty days except with the consent of the chairman terminated.

October 12, 1971

ATTACHMENT 5(c)

Filed District Court April 30, 1985

NORTH CAROLINA AGRICULTURAL EXTENSION SERVICE APPOINTMENT, PERFORMANCE REVIEW AND PROMOTION POLICIES FOR COUNTY EXTENSION PERSONNEL

County Extension staff members have primary responsibility for planning, executing and evaluating that phase of the total county Extension program within their areas of assignment. They cooperate with their colleagues in the N. C. Agricultural Extension Service and county leaders in performing their assigned responsibilities. The performance of this assigned responsibility is governed by philosophy, objectives, policies and procedures of the N. C. Agricultural Extension Service.

1. APPOINTMENT POLICY

a. Criteria for Appointment

The minimum requirement for employment with the N. C. Agricultural Extension Service is a Bachelor's degree

in an area related to the agent's assigned program responsibilities. A Master's degree in an area related to job responsibilities or acceptability as a graduate school candidate is desirable.

b. Procedures for Appointment

Extension agents are representatives of the U. S. Department of Agriculture and charged with carrying out educational work of the department. They are also designated as field faculty members of either N. C. State University or N. C. A & T State University with professional rank. They are appointed upon approval of the Board of County Commissioners.

2. PERFORMANCE REVIEW POLICY

a. A performance review and evaluation will be conducted on each agent annually by the County Extension Chairman and in alternate years jointly by the County and District Extension Chairmen. County Extension Chairmen will be evaluated annually by the District

Extension Chairman. All new agents will be evaluated at the end of their first year of employment jointly by the County and District Extension Chairmen. A satisfactory performance review and evaluation establishes eligibility for continued service and/or promotion when all other requirements are met. An unsatisfactory performance review and evaluation subjects the agent to the provision of 2.b. or reappointment for a period of one year.

b. Notice of termination of an agent will be not less than thirty days except with the consent of the agent being terminated or more than six months.

3. PROMOTION POLICY

a. From Assistant to Associate Extension Agent

An Assistant Agent is eligible for consideration for promotion to Associate upon having satisfactorily completed three years* of service with the N. C.

Agricultural Extension Service or equivalent experience. The agent must submit an application for promotion.** The County and District Extension Chairmen will review and make recommendations to Extension Administration. The District Extension Chairman will get recommendations from the relevant District Program Leader.

b. From Associate Extension Agent to Extension Agent

An Associate Agent is eligible for consideration for promotion to Agent upon having satisfactorily completed seven years* of service with the N. C. Agricultural Extension Service or equivalent experience. (Two years of which must have been with an Agricultural Extension Service.) The agent must submit an application for promotion.** The County and District Extension Chairman will review and make recommendations to Extension Administration. The District

Extension Chairman will get recommendations from the relevant District Program Leader.

c. County Extension Chairman

An individual is eligible for consideration for appointment as County Extension Chairman upon having satisfactorily completed six years* of service with the Agricultural Extension Service or equivalent experience. Two years must have been with the N. C. Agricultural Extension Service. A Master's degree is highly desirable. An individual interested in the position should submit an application to the Assistant Extension Director, County Operations, for consideration.

*A Master's degree may be substituted for one year of equivalent experience and a Doctor's degree for two years of equivalent experience.

**Applications are to be submitted to District Extension Chairmen no later than

March 1 of each year.

ADDENDUM
NORTH CAROLINA
AGRICULTURAL EXTENSION SERVICE
APPOINTMENT, PERFORMANCE REVIEW
AND
PROMOTION POLICY FOR
COUNTY EXTENSION CHAIRMEN

SITUATION: The responsibilities of the County Chairman position require leadership, administrative abilities, and human relation skills crucial to organizational success and the careers of the agents employed in the county program.

Because of the importance of these factors and to preserve the professional status of your career in the Extension Service, the following addendum has been added to the current policy and tenure publication dated October 12, 1971.

POLICY ADDENDUM Section B. Article 3. - Tenure Policy

(a) Extension Chairmen appointed from other positions will receive counsel at regular intervals by District Extension

Chairmen or other administrative personnel as to their performance in the role of County Extension Chairman.

(b) At the end of one year in the position, an in-depth performance review will be held by the District Extension Chairman. At this time one of the following actions will be taken.

(1) Satisfactory performance will merit continuation in the position and the employee becomes subject to sub-article (c) below.

(2) Conditional performance will result in continuation for a one-year term at which time the chairman will receive a satisfactory or unsatisfactory performance rating.

(3) Unsatisfactory performance will lead to the employee's reappointment to a position comparable to the position previously held, if appropriate.

(c) A chairman will be evaluated annually and must maintain a satisfactory

performance evaluation record.

(d) Notice of termination of a chairman will be no less than thirty days, except with the consent of the chairman terminated.

Acknowledgement of acceptance of this addendum is attested to by the signatures below.

Signed: _____

County Extension Chairman

Date: _____

Signed: _____

District Extension Chairman

Date: _____

Distribution: One copy to each signer

February, 1980

COUNTY EXTENSION CHAIRMAN

Job Summary

The County Extension Chairman is a member of the faculty of North Carolina

State University. The major responsibility of this job is to provide leadership for, and coordinate the efforts of, the county Extension staff in developing an effective total county Extension program. Other responsibilities include organizing and allocating resources, preparing budgets, maintaining administrative relationships, interpreting and communicating policy, teaching, evaluating, and reporting in his assigned county.

Major Functions and Tasks

Function 1. Develops and maintains a comprehensive understanding of the role of the North Carolina Agricultural Extension Service as an educational agency and its implications for administration and programming of his county.

Tasks:

1. Seeks to understand the philosophy, objectives, and policies of the North Carolina Agricultural Extension

Service.

2. Encourages county Extension staff members to maintain an understanding of the philosophy, objectives, and policies of the North Carolina Agricultural Extension Service.

3. Seeks to understand and encourages staff members to gain an understanding of the organization of resources of the North Carolina Agricultural Extension Service and their utilization.

4. Seeks to understand his role as County Extension Chairman and the relationship of his role to others in the Service.

Function II. Develops and maintains for himself and helps other staff members to develop and maintain a comprehensive understanding of the County Extension Service as a functioning component of the North Carolina Agricultural Extension Service.

Task:

1. Provides leadership for the county staff in assessing the county situation in terms of social and economic factors.

2. Interprets to the county staff the role of the County Extension Service in effecting changes in the county situation.

3. Continuously examines with his professional staff their role as change agents.

4. Continuously studies and assesses the effectiveness of the total county Extension program and plans with the county staff for needed program modifications.

5. Provides leadership for his co-workers in thinking through plans for involving the leadership of the county in planning, implementing, and evaluating the county Extension program.

Function III. Accepts the

responsibility for personnel management of the county Extension staff.

Tasks:

1. Cooperates with the District Chairman, District Agents, and county staff members in selecting new county Extension agents.

2. In cooperation with the District Chairman, presents prospective employees to the Board of County Commissioners for their approval.

3. Collaborates with the district Extension staff and the county Extension staff in the assignment of job responsibilities for each county staff member.

4. Cooperates with the district staff and appropriate county staff members in planning for and providing induction training for new staff members at the county level.

5. Cooperates with the District Agents, subject-matter Specialists, and

county staff members in organizing and providing in-service training programs for agents.

6. Creates a climate conducive to high morale and develops good working relationships among members of the county staff.

7. Counsels with the District Chairman, District Agents, and appropriate county staff members on appraisal of county personnel.

8. Counsels with the District Chairman regarding title changes, promotions, and salary adjustments for members of the county staff.

9. In collaboration with other county staff members, recruits, selects, and recommends for appointment secretarial staff for the county Extension office.

10. Accepts responsibility for seeing that secretarial work loads are equitably distributed.

Function IV. In cooperation with

District Chairman, District Agents, and County Commissioners, accepts responsibility for preparation and maintenance of the county Extension budget.

Tasks:

1. Counsels with county staff in determining needs for adequate housing, office equipment, supplies, demonstration materials, etc.

2. Counsels with the District Chairman in the preparation of the county Extension budget.

3. Prepares county budget requests, and with assistance of other appropriate persons, presents and justifies budget requests to the County Commissioners for their consideration.

4. Informs District Chairman and county staff members of the county Extension budget as approved by the County Commissioner.

5. Exercises controls of the

expenditures of budgeted funds and keeps adequate records.

Function V. In cooperation with the county staff, organizes and maintains an effective Extension advisory board to plan the county Extension program.

Tasks:

1. Interprets the role of the County Extension Advisory Board to the county staff.

2. Identifies with members of the county staff the qualifications needed by leaders to perform effectively on the Advisory Board.

3. Collaborates with the county staff and the leadership of key county organizations in the identification and selection of leaders to serve on the County Advisory Board.

4. Cooperates with staff in organizing and conducting training for members of the County Advisory Board.

Function VI. In cooperation with

the county staff and County Advisory Board, plans all areas of the total county program.

Tasks:

1. Assists county staff and Advisory Board in identifying types and sources of pertinent information needed to plan the county Extension program.

2. Provides leadership for county staff and Advisory Board in analyzing and interpreting information needed as a basis for identifying problem areas for possible treatment in the planned county program.

3. Provides leadership for county staff and Advisory Board in determining the kinds and number of study groups needed to analyze in depth those problem areas identified collectively by both the county staff and the Advisory Board.

4. Assists agents and Advisory Board members in interpreting the role of study groups and their relationship to the Advisory Board.

5. Collaborates with agents and Advisory Board in identifying and selecting potential leaders appropriate for the several study committees.

6. Provides leadership as appropriate for individual agents in forming and maintaining study groups.

7. Assists agents as needed in helping study groups identify needs, problems, and opportunities within their assigned program area.

8. Assists agents as needed in helping study groups formulate program recommendations for consideration by the total county staff and Advisory Board.

9. Reviews with the Advisory Board and staff recommendations of the several study groups in order that necessary modifications may be made and priorities established for the planned county program.

10. Assists the county staff in coordinating plans for the Extension

program with those of related organizations and agencies.

Function VII. Provides leadership and cooperates with the county staff in the preparation of the long-range written county Extension program.

Tasks:

1. Delegates to appropriate county staff members the responsibility for preparing a written program statement for their assigned area(s) of responsibility that incorporates the deliberations of his study group(s).

2. Assists members of the county staff in preparing program statements for their assigned areas of program responsibility.

3. In collaboration with county staff members, develops an integrated total county Extension program.

4. Discusses with the county staff plans for achieving mutually agreed upon objectives.

Function VIII. Provides leadership for the county staff in communicating the planned Extension program to the people.

Tasks:

1. Takes leadership and cooperates with his co-workers in preparing a popularized version of the planned county Extension program.

2. Sees that the program statement is interpreted to all people concerned.

3. Acts as liaison or designates an appropriate staff member to represent the county Extension staff in communicating the program to personnel of related agencies and organizations.

4. Establishes and maintains rapport with personnel of mass media and arranges for appropriate releases and presentations.

5. Utilizes all available channels of communication to ensure comprehensive public understanding of the planned program.

Function IX. Accepts the responsibility for leadership in preparing and submitting on schedule a well-coordinated and integrated county plan of work.

Tasks:

1. Understands and communicates to the staff the purpose of the plan of work and its relationship to the planned county program.

2. Provides leadership for county staff in analyzing the planned program and determining program areas and problems to be emphasized in the immediate and succeeding plans of work.

3. Counsels with agents in determining the time sequence for developing educational plans for attacking problems enumerated in the planned program.

4. Assigns to individual members of his professional staff the responsibility of developing plans of work for the

several problem areas identified in the planned program and that are consistent with their assigned areas of program responsibility.

5. Takes the leadership in assisting the staff to develop an integrated county plan of work.

6. With the county staff, apprises the County Advisory Board of educational plans outlined for a designated time to cope with problems enumerated in the planned program.

Function X. Provides leadership in planning and initiating action needed to implement all areas of program responsibility in the planned program.

Tasks:

1. Assists county staff in determining activities to be undertaken in the implementation of the plan of work.

2. Provides leadership for staff in determining and obtaining resources needed to implement the plan of work.

3. Counsels with staff regarding recruitment and selection of leaders to assist in carrying out the plan of work.

4. Assists staff in planning for and providing the training needed to equip leaders and staff members to carry out assigned program responsibilities.

5. Encourages and assists staff members in developing and maintaining two-way channels of communication with leaders in carrying out various activities encompassed in the plan of work.

6. Provides opportunities for staff to discuss continuously problems and progress being experienced in carrying out the plan of work.

Function XI. In cooperation with the county and district staffs, develops and implements a plan for evaluating the planned county Extension program and in making appropriate reports.

Tasks:

1. Provides leadership in

determining the effectiveness of the planned county program.

2. Assists staff as needed in assessing the effectiveness of human and material resources utilized in achieving the educational objectives of the plan of work.

3. Helps determine the progress made in the achievement of long-range objectives.

4. Accepts responsibility for and makes appropriate delegations to members of the staff for the preparation and submission of reports relating to achievement of program objectives.

5. Takes necessary action in ensure that all county reports are prepared and submitted on schedule and in accordance with regulations.

6. Utilizes the results of the evaluation to suggest needed changes in implementing or in redirecting the planned county program.

Function XII. Continuously strives to maintain and encourages the county staff to maintain a high level of professional competence.

Tasks:

1. Establishes for himself a set of personal and professional goals.

2. Continuously reviews and evaluates his personal and professional goals in relation to his personal aspirations and the demands of the job.

3. Evaluates his level of competence in relation to his personal goals.

4. Identifies and evaluates potential professional development opportunities in relation to his level of competence and professional goals.

5. Takes leadership in developing professional improvement programs as they relate to the levels of competence and professional objectives for himself and members of his staff.

6. Obtains the counsel and approval

of his District Chairman in developing and implementing programs of professional improvement for himself and his staff.

Function XIII. Maintains a well-planned program of staff operations in support of the county Extension program.

Tasks:

1. Arranges for, organizes, and conducts regular staff conferences.

2. Provides an opportunity at staff conferences for each staff member to report and discuss significant accomplishments, experiences, and current situations.

3. Reviews communications from his superiors and keeps the staff apprised.

4. Communicates to his superiors changing situations and/or problems relating to Extension work in the county.

Relationships

The County Extension Chairman is the administrative leader of the county

Extension staff in his assigned county. He is responsible to the Office of the Director through the District Extension Chairman and other members of the district staff for all program and administrative matters in his assigned county. In this capacity he provides leadership in coordinating the efforts or the county staff in developing the total county Extension program. He develops and maintains effective relationships with all members of the Extension Specialist staff.

The County Chairman is responsible for establishing and maintaining effective working relationships with the Board of County Commissioners and County Extension Advisory Board. He is expected to keep these groups apprised about the county program and to seek continuously their counsel and advice.

To increase the effectiveness of the county Extension program, the County Extension Chairman provides leadership for

his staff and takes the initiative in establishing sound relationships with other governmental agencies and farm, home, and youth organizations in his county. He also maintains liaison with civic organizations, related businesses, informal educational organizations, and other voluntary groups.

Qualifications

A. Education and Experience

The desired level of formal training for the County Extension Chairman is a Master's degree from an accredited institution in a field related to supervision and administration. The minimum requirement is the bachelor's degree in an area related to Extension work.

In addition to his formal education, the County Extension Chairman must have had successful Extension experience as adjudged by demonstrated ability to plan, organize, and work with people.

B. Personal Attributes

Successful performance of the duties encompassed in the County Extension Chairman's job requires that the individual possess the qualities of an educational leader and statesman, habits of industry, a sense of responsibility, a genuine appreciation for the worth of the individual, and a high degree of objectivity.

The responsibilities of the job require the individual to possess good health.

ATTACHMENT (b)
MEMORANDUM OF UNDERSTANDING
between
The N. C. Agricultural Extension Service
N. C. State and A & T State Universities
and
The Board of County Commissioners

The North Carolina Agricultural Extension Service was established as a part of the School of Agriculture and Life Sciences of North Carolina State University by Federal and State

legislation for the specific purpose of "extending" the educational service of the University to the people of the State on subjects relating to agriculture, home economics, 4-H and youth, and community and natural resource development. The laws creating Extension were specifically designed to ensure that the findings of research were communicated to the people. Under the Appropriations Act of 1972, funds were provided to the 1862 Land Grand Universities to enhance the extension outreach of the 1890 Universities of which A & T State University is one. The Food and Agriculture Act of 1977 stipulated that these funds would be appropriated directly to the 1890 Institutions and formalized the Extension program as an official part of the School of Agriculture at this institution. However, to provide effective coordination, administrative contacts will be handled by the county and district chairmen of North Carolina State

University with appropriate attention given to A & T State University personnel.

Legislation provided that Agricultural Extension work be a partnership among three levels of government -- Federal, State and County. Extension Agents are officially appointed as members of the U. S. Department of Agriculture and charged with carrying out educational work of the department. Upon acceptance by the Board of County Commissioners, they are also designated as field faculty members of either North Carolina State University with professional rank, or A & T State University.

To assure that educational programs offered by Agricultural Extension at both land-grant institutions meet the needs of local clientele, it is important that both elected and appointed officials of each level of government understand their respective responsibilities and

relationship in the conduct of this work.

RESPONSIBILITIES and RELATIONSHIPS

The North Carolina Agricultural Extension Service and the A & T State Agricultural Extension Program will:

1. Establish minimum requirements and qualifications for employment in Extension work.

2. Receive and examine applications for employment.

3. Interview and screen applicants to determine qualifications and availability.

4. Recommend to the County Commissioners qualified applicants for appointments to vacant or new Extension positions.

5. Recommend the salaries Extension agents and paraprofessionals.

6. Recommend the salaries Extension secretaries and pay the State portion according to the State Personnel Pay Plan.

7. Determine jointly with the County

Board of Commissioners the share salaries to be paid by each and provide the State and Federal share of these salaries.

8. Prepare and submit an annual budget request to the Board of Commissioners for the county's share of funding for salaries and operating expenses.

9. Provide funds for official travel necessary in the conduct of Extension work to the extent that funds are available for the purposes authorized by State and Federal policies.

10. Provide Extension agents with official envelopes, bulletins (designated for free distribution), leaflets, and other publications for educational purposes.

11. Accept responsibility and provide the leadership for administration and supervision for Extension programs and personnel, including compliance with the requirements of Affirmative Action and

Equal Employment Opportunity guidelines.

12. Develop and administer a personnel management plan that will provide for:

a. The annual review of each worker's performance.

b. Counseling for job improvements where needed.

c. Periodic county program reviews.

13. Provide a staff of specialists to continuously train agents in current technology and other changes affecting agriculture, home economics, 4-H and youth, community and natural resource development and to assist them in the conduct of work in these areas.

14. Provide Extension Workers with training programs needed to maintain effective program delivery.

15. Develop and maintain a County Advisory Leadership System to ensure that county Extension programs are based on the particular needs of people in their

respective county.

THE BOARD OF COUNTY COMMISSIONERS WILL:

1. Provide the county's share of salaries for Extension personnel.

2. Provide office space and equipment, utilities, telephone, office supplies, demonstration materials and other items needed for efficient operation of the County Extension Office and program.

3. Review and consider the annual budget request from the Extension Service and take appropriate action by July 1 of each fiscal year.

4. Confer and advise with the District and County Extension Chairmen and Extension Advisory Council relative to county Extension programs.

THE NORTH CAROLINA AGRICULTURAL EXTENSION SERVICE AND THE A & T STATE AGRICULTURAL EXTENSION PROGRAM AND THE BOARD OF COUNTY COMMISSIONERS MUTUALLY

AGREE:

1. That all county Extension appointments and separations are to be worked out jointly between the North Carolina Agricultural Extension Service and the Board of County Commissioners, and that no official action will be taken by either party regarding appointment or separation prior to discussion of the matter with the other party.

2. That the policies established by the State of North Carolina and followed by the University, be used as a guide in granting annual, sick, civil and military leave for Extension personnel.

3. To cooperate in applying Affirmative Action and Equal Employment Opportunity plans of the North Carolina Agricultural Extension Service.

4. That Extension agents will not be classified under a county classification system.

5. That Extension agents will follow

County policies relating to office hours and holidays.

We are in agreement with the above description of the responsibilities and relationships, and that this memorandum of understanding may be reviewed at any time, but shall be reviewed once each four years.

Date: June 2, 1980

s/Walter J. Harris, Chairman
Board of Warren County Commissioners

Date: July 11, 1980

s/T. C. Blalock, Director
North Carolina
Agricultural Extension Service

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Supreme Court, U.S.
FILED
JUL 7 1987
JOSEPH F. SPANIOL, JR.
CLERK

87-279

No. _____

****

In the

Supreme Court of the United States

October Term, 1987

****

EMILY RUTH BALLINGER,

Petitioner,

vs.

NORTH CAROLINA
AGRICULTURAL EXTENSION SERVICE, et al.,

Respondents.

****

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

VOLUME III OF III

****

Max D. Ballinger
Attorney for Petitioner
Post Office Box 8010
Greensboro, North Carolina
27419-0010

Of Counsel:

Max D. Ballinger
Telephone: (919)294-3387

****

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ATTACHMENT 14
NORTH CAROLINA
AGRICULTURAL EXTENSION SERVICE
COUNTY EXTENSION CHAIRMEN SINCE 1974

Listed by Counties.

Persons who APPLIED are Listed under County.

Indications:

Person named CHAIRMAN is marked by an ASTERISK (*) after name.

Persons INTERVIEWED by Board of County Commissioners for Position BUT NOT APPOINTED are marked by a DOUBLE ASTERISK (**) after name.

Persons who applied but were neither appointed nor interviewed are marked by a triple asterisk (***) after name.

When only one applicant is listed under a county, there were no other applicants.

Name	Race	Sex	DOB	Deg	Age When Applied	Equiv Exper
Year Appointed Chairman: 1974. County: Wilkes						
H. M. Ramseur*	W	M	4/24/31	BS	43	17
M. B. Wright***	W	M	4/5/21		53	21
Year Appointed Chairman: 1974. County: Northampton						
E. J. Long*	W	M	2/23/44	BS	40	20
Fred Belfield***	B	M	11/23/35		39	13
Doug Eason***	W	M	7/19/33		41	18
Year Appointed Chairman: 1974. County: Caswell						
M. C. Small	W	M	3/17/42	MS	32	9
Year Appointed Chairman: 1974. County: Alexander						
B. G. Westbrook*	W	M	4/7/33	MS	41	18
Roger Hyatt**	W	M	10/10/33		41	16
Kenneth Peterson***	W	M	13/3/25		49	17

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1974. County: Burke						
H. L. Miller*	W	M	9/17/32	MS	42	17
R. M. Bowden***	W	M	9/11/23		51	23
Roger Hyatt***	W	M	12/10/33		41	16
Robert Hyatt***	W	M	4/22/34		40	8
Year Appointed Chairman: 1974. County: Pasquotank						
Donald Baker*	W	M	3/17/41	BS	33	6
W. M. Hearn, Sr.***	W	M	9/14/20		54	19
J. R. Vaughn***	W	M	2/2/35		39	10
Harvey Morris***	W	M	3/14/35		39	17
Victor Lynn***	W	M	4/24/37		37	11
Year Appointed Chairman: 1975. County: Columbus						
G. D. McCullen*	W	M	3/10/40	MA	35	9
M. K. Dennis***	W	M	3/26/32		43	18
Harold Lloyd***	W	M	4/12/25		50	21
Harvey Morris***	W	M	3/14/35		40	18
John Spaulding***	B	M	6/13/13		62	30

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1975. County: Martin						
L. L. Allen*	W	M	6/17/38	MS	37	11
R. M. K. Edwards***	B	M	1/28/18		57	29
C. J. Cameron***	W	M	7/28/31		44	12
P. C. Bryant***	W	M	3/22/28		47	21
Year Appointed Chairman: 1975. County: Wayne						
T. S. Godwin*	W	M	2/1/25	MA	50	27
Frank Baker***	W	M	6/3/34		41	16
William Lamm***	W	M	8/21/28		47	22
Wesley Towsend***	W	M	2/14/24		51	22
B. T. McNeill***	B	M	8/23/22	BS	53	25
Year Appointed Chairman: 1975. County: Tyrrell						
Frances S. Voliva*	W	F	6/26/32	BS	43	11
Year Appointed Chairman: 1975. County: Person						
F. J. Rivers*	W	M	6/26/32	BS	43	17
M. B. Wright***	W	M	4/5/21		54	22

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1975.	County: Beaufort					
M. C. Griffin*	W	M	12/25/36	MS	39	11
H. C. Riddick***	W	M	5/22/45		30	7
Jack Cullipher***	W	M	3/27/40		35	5
R. M. Pilch***	W	M	12/29/37		38	9
W. M. Hearn***	W	M	10/25/44		31	6
Gordon Sawyer***	W	M	2/28/39		36	11
Steve Warrick***	W	M	3/29/51		24	2
Gaylon Ambrose***	W	M	10/17/49		26	5
Harvey Morris***	W	M	3/14/35		40	18
Year Appointed Chairman: 1975.	County: Iredell					
Kenneth Vaughn*	W	M	7/15/37	MS	38	15
D. O. Ivey***	B	M	3/17/20		55	34
S. D. Little***	B	M	2/10/22		53	22
Jack Smity, Jr.***	W	M	5/20/29		56	14
Year Appointed Chairman: 1975.	County: Pender					
W. F. Walker*	W	M	7/17/23	MS	52	20
Dan E. Baucom***	W	M	5/14/32		43	19
J. G. Richardson***	W	M	9/6/42		33	11
John Wynne***	W	M	1/16/26		49	25

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1975. County: Stanley						
J. F. Simpson*	W	M	12/7/43	BS	32	9
Carol Baker**	W	F	6/7/31		44	20
Ray Kiser***	W	M	6/19/21		54	22
Year Appointed Chairman: 1975. County: Buncombe						
D. R. Burnette*	W	M	11/19/40	MS	35	11
C. P. Bickford***	W	M	6/15/30		45	11
J. D. Brooks***	W	M	5/28/42		33	9
Nancy Stancil***	W	F	1/8/23		52	14
Robert Hyatt***	W	M	4/22/34		41	9
Year Appointed Chairman: 1975. County: Alamance						
Millis B. Wright*	W	M	4/5/21	BS	54	20
Richard J. Freeman***	W	M	9/1/33		42	16

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1976. County: Johnston						
Bruce Woodard*	W	M	6/2/31	MS	45	23
David Stanaland***	W	M	4/3/42		34	9
Frank Baker**	W	M	6/3/34		42	17
Harold Lloyd***	W	M	4/12/25		51	22
Pieter Westerbeek***	W	M	5/8/38		38	14
H. F. Palmer***	W	M	8/12/22		54	23
James Stephenson***	W	M	1/18/42		34	11
Leroy James**	B	M	4/14/33		43	18
Year Appointed Chairman: 1976. County: Cabarrus						
E. E. Bishop*	W	M	12/20/22	BS	54	26
J. P. Bowles***	W	M	3/10/21		55	29
Year Appointed Chairman: 1976. County: Transylvania						
Robert R. Hyatt*	W	M	4/22/34	ME	42	10
Roger Hyatt***	W	M	12/10/33		43	18
James H. Ray***	W	M	12/2/42		34	11
Dennis Winters***	W	M	4/30/48		28	6
Linda Best***	W	F	4/12/41		35	9

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1976. County: Swain						
C. D. Bunn*	W	M	7/10/30	MS	46	16
Roger Hyatt***	W	M	12/10/33		43	18
Year Appointed Chairman: 1976. County: Brunswick						
R. M. Coleman*	W	M	7/20/42	MS	34	10
Dan E. Baucom***	W	M	5/14/32		44	20
M. K. Dennis***	W	M	3/26/32		44	19
Year Appointed Chairman: 1976. County: Union						
M. C. Howell*	W	M	2/23/41	BS	35	14
P. E. Bazemore***	B	M	4/11/21		55	25
Year Appointed Chairman: 1976. County: Wake						
V. B. Lynn*	W	M	4/24/37	MS	39	13
Year Appointed Chairman: 1976. County: Lincoln						
David Choate*	W	M	1/1/36	BS	40	15
A. L. Smith***	W	M	10/20/39		37	13
Howard Waynick***	W	M	1/9/29		47	17
Year Appointed Chairman: 1976. County: Cumberland						
B. T. McNeill*	B	M	9/23/22	MS	54	28

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1977. County: Greene						
R. A. Hayes*	W	M	9/5/38	BS	49	11
Year Appointed Chairman: 1977. County: Wilson						
C. H. Jernigan*	W	M	1/23/42	ME	35	13
Frank Baker***	W	M	6/3/34		43	18
Year Appointed Chairman: 1977. County: Watauga						
Gene Brewer*	W	M	4/8/42	MS	35	13
Bill Fowler***	W	M	5/26/41		36	11
Year Appointed Chairman: 1977. County: Granville						
Frank Baker*	W	M	6/3/34	MS	43	18
I. W. Murfee***	B	M	4/8/24		53	24
Dorothy Wilkinson***	W	F	8/6/22		55	33
Year Appointed Chairman: 1977. County: Alleghany						
Helen Dosier*	W	F	11/13/39	BS	38	6
William Fowler***	W	M	5/26/41		36	11
Jim Weaver**	W	M	4/10/38		39	15

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1977. County: Mitchell						
David Terrell*	W	M	3/8/30	MS	47	20
Year Appointed Chairman: 1977. County: Bertie						
W. J. Griffin*	W	M	4/20/47	BS	30	8
Year Appointed Chairman: 1977. County: Polk						
O. R. Ammons*	W	M	10/24/46	BS	31	9
Carlos P. Bickford***	W	M	6/15/30		47	13
Judy M. Groff***	W	F	12/21/49		28	7
Year Appointed Chairman: 1978. County: Pitt						
Leroy James *	B	M	4/14/33	MS	45	20
Year Appointed Chairman: 1978. County: Duplin						
Lois Britt*	W	F	9/30/35	MS	43	22
Robert Swain***	W	M	1/2/36		42	12
S. B. Wilson***	W	M	8/3/33		45	19
Year Appointed Chairman: 1978. County: Rowan						
James H. Caudill*	W	M	7/15/37	MS	41	18
Rodney Haines***	W	M	3/10/35		43	12

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1978. County: Wayne						
Wesley Townsend*	W	M	2/14/24	BS	54	27
John H. Wynne***	W	M	1/16/26		52	28
William Lamm***	W	M	8/21/28		50	25
Year Appointed Chairman: 1979. County: Randolph						
Talmadge Baker*	W	M	11/30/33	MS	46	18
Dick Peterson***	W	M	5/17/37		42	11
Drue Trotter***	W	F	12/28/43		36	14
Richard Freeman***	W	M	9/1/33		46	22
Doug Young***	W	M	12/15/24		55	27
Rodney Haines***	W	M	3/10/35		44	13
Year Appointed Chairman: 1979. County: Forsyth						
J. D. Carroll*	W	M	8/6/28	MS	51	27
W. E. Mainous***	W	M	3/28/31		48	25
Worth Gurkin**	W	M	4/1/34		45	23
Al Stanford**	W	M	7/5/34		45	15
Year Appointed Chairman: 1979. County: Yancey						
James Ray*	W	M	12/2/42	MS	37	15
Carlos Bickford***	W	M	6/15/30		49	15
Johnny G. Hensley***	W	M	12/26/50		29	5

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1979.	County: Davie					
W. E. Mainous*	W	M	3/28/31	MS	48	21
Judge A Pierce***	W	M	12/2/36		43	14
Ronnie Thompson***	W	M	10/8/49		30	8
Year Appointed Chairman: 1979.	County: Moore					
C. E. Hammond*	W	M	1/31/40	BS	39	16
Tom Colson***	W	M	8/11/43		36	9
Paul Seabolt***	W	M	4/7/29		50	21
Clarence Cameron***	W	M	7/28/31		48	17
Year Appointed Chairman: 1979.	County: Bladen					
M. K. Dennis*	W	M	3/26/32	MS	47	22
Harvey Morris***	W	M	3/14/35		44	22
Year Appointed Chairman: 1979.	County: Onslow					
Dan Baucom*	W	M	5/14/36	MS	43	23
Charles E. Hammond***	W	M	1/31/40		39	16
Chase Padgett***	W	F	12/29/38		41	16

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1979. County: Warren						
L. C. Cooper*	B	M	2/21/21	BS	40	20
George Koonce***	B	M	1/3/38		41	19
Emily Ballinger***	W	F	12/3/26		53	31
Year Appointed Chairman: 1979. County: Pamlico						
Reginald Piland*	W	M	4/15/48	BS	31	5
Year Appointed Chairman: 1979. County: Caswell						
L. N. Whitt*	W	M	8/20/46	BS	33	6
Donna Pointer***	W	F	5/3/46		33	11
Year Appointed Chairman: 1979. County: New Hanover						
C. E. Lewis*	W	M	10/4/29	Ph.D.	50	16
Thomas Dail***	W	M	12/18/43		36	8
Harvey Morris***	W	M	3/14/35		44	22
James M. Warren***	W	M	12/25/40		39	5
Year Appointed Chairman: 1979. County: Vance						
James D. Stephenson*	W	M	1/18/42	MS	37	14
Phyllis Stainback***	W	F	10/4/37		42	20
Marshall Bowden***	W	M	9/11/23		56	28

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1979. County: Northampton						
E. W. Rogister*	W	M	8/2/33	MS	46	22
Year Appointed Chairman: 1979. County: Jones						
M. C. Small*	W	M	3/17/42	MS	37	14
Charles Hammond***	W	M	1/31/40		39	16
Fletcher Barber***	B	M	11/14/53		26	31
Year Appointed Chairman: 1979. County: Lee						
John Hall*	W	M	6/11/44	BS	35	10
Fay Donnell***	W	F	11/15/48		31	9
Clarence Cameron***	W	M	7/28/31	BS	48	17
Year Appointed Chairman: 1979. County: Robeson						
John Richardson*	W	M	9/6/42	MS	37	15
M. K. Dennis***	W	M	3/26/32		47	22
Year Appointed Chairman: 1979. County: Cleveland						
B. F. Spencer*	W	M	7/27/21	BS	58	31

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1980. County: Buncombe						
George Biddix*	W	M	5/7/34	MS	46	24
J. B. Reeves***	W	M	5/11/51		29	6
Reagon Ammons***	W	M	10/24/46		34	12
Year Appointed Chairman: 1980. County: Nash						
James Stephenson*	W	M	1/18/42	MS	38	15
Fred Belfield***	B	M	11/23/35		45	19
Bryan Page***	W	M	11/28/46		34	9
Year Appointed Chairman: 1980. County: Anson						
Hoover Royals*	B	M	3/26/29	MS	51	24
Year Appointed Chairman: 1980. County: Perquimans						
W. R. Jester*	W	M	5/9/47	MS	33	6
Henry C. Riccick**	W	M	5/22/45		35	12
Kenneth Bateman***	W	M	8/17/50		30	6
Year Appointed Chairman: 1980. County: Hertford						
John W. Dunham*	W	M	12/20/44	BS	36	9
James Daughtry***	W	M	8/26/42		38	10
James E. Wright***	B	M	3/10/29		51	26

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1980.	County: Ashe					
James Carey*	W	M	2/28/48	MS	32	5
Robert F. Breland***	W	M	5/12/37		43	20
Dana Tugman***	W	M	3/31/27		53	17
Year Appointed Chairman: 1980.	County: Vance					
Donald Cobb*	W	M	5/23/53	MS	27	6
Phyllis Stainback***	W	F	10/4/37		43	22
Fred Belfield***	W	M	11/23/35		45	19
Year Appointed Chairman: 1980.	County: McDowell					
James R. Mabe*	W	M	8/31/48	BS	32	10
Year Appointed Chairman: 1980.	County: Cabarrus					
Alvin M. Stanford*	W	M	7/5/34	MS	46	16
William Triplett***	W	M	8/29/44		36	8
Year Appointed Chairman: 1980.	County: Clay					
John Reeves*	W	M	5/11/51	BS	29	6
Year Appointed Chairman: 1980.	County: Avery					
J. M. Pittman*	W	M	2/9/47	MS	33	11
Johnnie Hensley***	W	M	12/26/50		30	6

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1981.	County: Rockingham					
Frank Green*	W	M	3/15/31	ME	50	24
Year Appointed Chairman: 1981.	County: Pamlico					
Fred May*	W	M	10/6/42	BS	39	6
A. Ray Harris***	W	M	1/30/48		33	11
Fred O'Neal***	W	M	3/20/53		28	6
Year Appointed Chairman: 1981.	County: Rutherford					
Eugenia Ware*	W	F	4/27/25	MS	56	31
Steven West***	W	M	8/16/44		37	10
Dewey Hennessee***	W	M	11/20/24		57	10
Year Appointed Chairman: 1981.	County: Chowan					
J. Michael Williams*	W	M	12/1/49	MS	32	5
Henry Riddick***	W	M	5/22/45		36	13
Zackie Harrell***	W	M	2/6/42		39	14
Year Appointed Chairman: 1981.	County: Montgomery					
Roy Reece*	W	M	8/24/38	MS	43	12
James W. Weaver***	W	M	4/10/38		43	19
Junius E. Davis, Jr.***	W	M	8/3/50		31	7

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1981. County: Stokes						
Susan M. Hilton*	W	F	8/2/52	BS	29	7
Patricia Brevard***	W	F	1/21/52		29	5
Year Appointed Chairman: 1981. County: Hoke						
Willie Featherstone*	W	M	11/30/49	MS	32	5
Ellen S. Willis***	W	F	3/19/21		60	22
Year Appointed Chairman: 1981. County: Surry						
Jack Waddell*	W	M	9/25/27	MS	54	28
Ann Tyndall***	W	F	8/9/48		33	9
Charles E. Earnest***	W	M	1/15/30		51	26
Year Appointed Chairman: 1981. County: Jackson						
Jerry McAbee*	W	M	11/18/49	MS	32	5
Johnny Hensley***	W	M	12/26/50		31	7
Vincent Bonaminio***	W	M	5/2/40		41	8
Year Appointed Chairman: 1982. County: Washington						
Sandra C. Brown*	W	F	1/17/42	BS	40	14
James A. Daughtry***	W	M	8/26/42		40	10

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1982.	County: Warren					
Russell King*	W	M	1/12/48	MS	34	8
Emily Ballinger**	W	F	12/3/26		56	34
George Koonce***	B	M	1/3/38		44	22
Year Appointed Chairman: 1982.	County: Hertford					
James Wright*	B	M	3/10/29	BS	53	28
Jane Taylor***	W	F	4/30/37		45	23
Fletcher Lassiter***	W	M	6/15/23		59	19
Year Appointed Chairman: 1982.	County: Chatham					
Carl Outz*	W	M	5/10/32	BS	50	26
Fred Belfield***	B	M	11/23/35		47	20
Year Appointed Chairman: 1982.	County: Edgecombe					
James Pearce*	W	M	8/10/53	BS	29	6
Fred Belfield***	W	M	11/23/35		47	21
John Gibson***	B	M	7/1/44		38	9
Richard Bradley***	W	M	4/13/42		40	15
A. P. Coleman**	W	M	6/16/36		46	20
Year Appointed Chairman: 1982.	County: Graham					
Raymond Norton*	W	M	3/28/46	MS	36	12

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1982. County: Richmond						
Earline Waddell*	W	F	5/4/32	MS	50	20
J. Russell Sikes***	W	M	9/8/51		31	8
Benjamin McCallum***	B	M	1/13/51		31	6
Year Appointed Chairman: 1982. County: Gaston						
Martha Burris*	W	M	9/29/52	MS	31	7
Sue Peck***	W	F	10/6/51		32	8
James Sloop***	W	M	6/26/50		33	11
Gene Gray***	W	M	9/2/33		50	18
Year Appointed Chairman: 1982. County: Greene						
Ray Williams*	W	M	11/3/49	MS	34	10
W. G. Simmons***	W	M	1/3/42		41	7
Marion F. Howell***	W	M	8/14/44		39	7
Mike Regans**	W	M	5/6/46		37	8
Johnnie Jones***	B	M	7/2/44		39	12

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1983. County: Yadkin						
Jack Loudermilk*	W	M	2/27/47	BS	36	11
Warren M. Hearn, Jr.***	W	M	10/25/44		39	14
Everette Hartzog***	W	M	12/14/30		53	22
Olivia S. Simpson***	W	F	1/14/51		32	9
Year Appointed Chairman: 1983. County: Granville						
Mary B. Shurling*	W	F	8/20/37	BS	46	12
Charles Gantt***	W	M	1/20/38		45	18
Johnsie Cunningham***	B	F	11/2/50		33	7
Year Appointed Chairman: 1983. County: Craven						
John W. Dunham*	W	M	12/20/44	BS	39	12
Bryan Page***	W	M	11/28/46		37	13
Stanley Dixon***	W	M	1/2/53		30	8
Year Appointed Chairman: 1983. County: Scotland						
Ann M. Braswell*	W	F	10/26/35	BS	48	16
John Dunham**	W	M	12/20/44		38	11
Clarence Cameron***	W	M	7/28/31		51	20

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1984. County: Orange						
William E. Mainous*	W	M	3/28/31	BS	53	25
Bonnie Davis***	B	F	12/10/25		59	34
Fonrose Gore***	W	F	7/31/36		48	18
Year Appointed Chairman: 1984. County: Davie						
Ronnie W. Thompson*	W	M	10/8/49	BS	35	12
Richard Rhodes***	W	M	12/27/50		34	8
Robert Lopp***	W	M	3/19/48		36	9
Michael Miller**	W	M	3/9/51		33	10
John Brooks***	W	M	5/28/42		42	18
Year Appointed Chairman: 1984. County: Hyde						
John Deweese*	W	M	11/29/53	BS	31	7
Ann Dale***	W	F	9/7/55		29	7
Year Appointed Chairman: 1984. County: Forsyth						
Jerry W. Hardesty*	W	M	8/2/35	ME	49	27
Ann Tyndall***	W	F	8/9/48		36	13
Bryan Page***	W	M	11/28/46		38	13

Name	Race	Sex	DOB	Deg	Age	Exper
Year Appointed Chairman: 1984. County: Rutherford						
G. E. Biddix, Jr.	W	M	5/7/34	MA	50	27
Darrel Conley***	W	M	11/21/50		34	11
Year Appointed Chairman: 1984. County: Clay						
John C. Blair*	W	M	12/26/25	BS	59	22
Dennis Winters***	W	M	4/30/48		36	8
Max M. Lund***	W	M	5/5/25		59	13
Phil Langley***	W	M	5/12/54		30	7

RESPONSE OF DEFENDANT HUGH L. LINER TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Filed District Court April 30, 1985

1. a. Date of original employment:

January 1, 1958

b. Positions held:

Assistant County Agent

Extension Economist (Instructor,

Assistant Extension

Professor, Associate Extension Professor,

Extension

Professor)

District Program Leader - Agriculture

District Extension Chairman

c. Position in first quarter of 1982:

District Extension Chairman

d. Immediate supervisor:

Dr. Paul Dew

e. Duties: See Attachment 1.

2. Mr. Cooper's retirement decision:

Mr. Cooper visited my office sometime during the week of February 1, 1982 and indicated that he was considering

retirement. His letter of retirement was received February 5, 1982.

3. Notice of Mr. Cooper's retirement to other persons:

The only person I recall advising of Mr. Cooper's decision to retire was Dr. Paul Dew. I first orally advised Dr. Dew of Mr. Cooper's decisions and then forwarded him the memorandum appended as Attachment 2.

4. Documents generated:

I generate numerous documents in the course of my work. These documents relate to my duties which are generally described in Attachment 1.

5. Louisburg meeting:

a. Dr. Paul Dew advised me by telephone that a meeting was scheduled in Louisburg on March 18, 1982. At the grievance hearing in this matter I initially indicated that the Louisburg meeting was on march 11. That date was incorrect. The only meeting was on March

18.

b. March 18, 1982.

c. I did not prepare any papers in advance of this meeting.

d. I received no papers in advance of this meeting.

e. I do not know who planned and organized this meeting.

f. Dr. Chester Black, Dr. Dew, and I attended this meeting. Other persons present, to the best of my recollection, were Jim Harris and a Mr. Killian.

g. Various members of the group indicated that they desired a competent livestock agent be hired. Dr. Black explained the process of filling vacancies. He indicated that if the County Chairman's position were filled from within the current staff, an individual trained in animal science would be hired.

h. I did not prepare any documents after this meeting.

i. I did not receive any documents after this meeting.

6. Contacts with Russell King between January 1 and April 6, 1982:

(1)

a. March 1, 1982

b. Extension office

c. I generated the contact

d. Subject - Extension Chairman vacancy in Warren County

e. no notes

(2)

a. March 23, 1982

b. Dr. Dew's office

c. Dr. Dew

d. Interview

e. My notes are appended as Attachment 3.

(3)

a. March 26 or 29, 1982 telephone call

b. My office - don't know where he was

c. Don't recall

d. Don't recall primary subject.

Mr. King did request that he be permitted to add information to his resume and I agreed to his request.

e. No notes.

(4)

a. April 2, 1982

b. Miss Ballinger's office

c. I generated the contact

d. Presenting two candidates for County Extension Chairman

e. No notes.

(5)

a. April 5, 1982

b. County Commissioners' Room and Extension office in Warrenton

c. County Commissioners and me

d. Interview and appointment for Extension Chairman

e. No notes.

7. Contacts with Emily Ballinger between January 1, and April 6, 1982:

(1)

a. March 1, 1982

b. Extension office

c. I generated the contact

d. Subject - Extension Chairman vacancy in Warren County

e. No notes.

(2)

a. March 23, 1982

b. Dr. Dew's office

c. Dr. Dew

d. Interview

e. My notes have been previously provided to the plaintiff.

(3)

a. April 2, 1982

b. Miss Ballinger's Office

c. I generated the contact

d. Presenting two candidates for County Extension Chairman

e. No notes.

(4)

a. April 5, 1982

b. County Commissioners' Room and Extension Office in Warrenton

c. County Commissioners and me

d. Interview and appointment of Extension Chairman

e. No notes.

8. Contacts with persons supporting Mr. King:

I received three letters from persons supporting Mr. King's candidacy for County Chairman. Those letters and my responses to those letters are appended as Attachments 4-9. I do not recall any other contact with any supporter of Mr. King.

9. Notes of Plaintiff's interview: See Interrogatory 7(2)(e).

10. Notes of Mr. King's interview: See Attachment 3.

11. Decision to recommend Mr. King and the plaintiff. Dr. Black, Dr. Dew and I agreed that Russell King and Emily Ballinger should be recommended to the

Warren County Board of Commissioners for the position of County Agricultural Extension Chairman. We reached our decision around 5:00 P.M. on March 23, 1982. Following that decision I advised the following persons of this decision:

i. Jack Harris. Mr. Harris was verbally told of our recommendation on April 2, 1982. I have no notes of that conversation.

ii. Plaintiff and Mr. King. They were orally advised of our recommendation on April 2, 1982. I have no notes of that conversation.

iii. Tom Byrd. Mr. Byrd, an employee of the Extension Service, was verbally advised of our recommendation on April 5, 1982 and requested to prepare two news releases, one for plaintiff in case she was appointed and one for Mr. King in case he was appointed. I do not have notes of this conversation and do not have copies of the news releases.

iv. Warren County Commissioners. I verbally advised the County Commissioners of our recommendation on April 5, 1982. I have no notes of that conversation.

12. Contact with the plaintiff: I have known the plaintiff since July, 1979. As District Chairman I had opportunities to observe the plaintiff's work and the responsibility to evaluate her performance.

13. Personal contact with Warren County Commissioners between March 1, 1982 and April 5, 1982:

a. Jack Harris - March 30, 1982 - McKimmon Center. Asked him if Board of Commissioners would accept the recommendation of two individuals for County Extension Chairman in Warren County. I have no notes of this conversation and no other persons were present.

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ATTACHMENT 4

March 19, 1982

Mr. Richard N. Gupton

Route 2, Box 128-A

Louisburg, NC 27549

Dear Mr. Gupton:

Thank you for your letter concerning the current Extension situation in Warren County. We are privileged to have people such as you who are interested enough in the program to take time to write us. Please be assured that we will do everything in our power to see that we get the best Extension program possible for Warren County.

Thank you again.

Sincerely,

s/Hugh L. Liner

District Extension Chairman

dsw

ATTACHMENT 5

Route 2, Box 128-A

Louisburg, N.C. 27549

March 9, 1982

Mr. Hugh Liner

P. O. Box 5157

Raleigh, North Carolina 27650

Dear Dr. Liner:

I understand that the present Warren County Agricultural Extension Chairman, Mr. L. C. Cooper, will be retiring in April. I also understand that there are several employees presently working with the Warren County Agricultural Extension Service who have applied for this position.

I, as Manager of the Warren F.C.X., have been working closely with the Warren County Extension Service. This letter is asking for your support of Russell King to be appointed the position of Chairman for the Warren County Extension Service. I

feel he is well qualified to fill this position and would be very beneficial for the people of Warren County in the future.

Your consideration of Mr. King for this position will be greatly appreciated. If I can be of any service to you, please do not hesitate to contact me.

Sincerely,

S/Richard N. Gupton

Manager of Warren F.C.X.

Warrenton, N.C.

RNG:sg

ATTACHMENT 6

March 19, 1982

Mr. Irvin D. Smith

Rt. 3, Box 59

Warrenton, NC 27589

Dear Mr. Smith:

Thank you for your letter concerning the current Extension situation in Warren County. We are priveleged to have people

such as you who are interested enough in the program to take time to write us. Please be assured that we will do everything in our power to see that we get the best Extension program possible for Warren County.

Thank you again.

Sincerely,

S/Hugh L. Liner

District Extension Chairman

dsw

ATTACHMENT 7

March 4, 1982

Dr. Hugh Liner

Dist. Ext. Chairman

303 Ricks Hall N.C.S.U.

Raleigh, N. C. 27607

Dear Dr. Liner:

I have been a cattle and tobacco farmer in Warren County for the past eight years. During those years, I have seen

Warren County's agriculture segment really grow. What concerns me now is the dire need for someone in our county extension dept. who is the familiar with animal science. Our county is one of the leaders (animal numbers) in our area of the state; yet, for the last several years we have not had a qualified ext. person in the animal science area. I have gone to my ext. agent several times concerning the BCIP program or questions about beef and he completely at a lost. I realize that he is a very likeable person, but I feel like that my taxes are paying for knowledge, not personality. I would personally like to see a young man just out of college because this young graduate would be able to put new academic knowledge to work for us in this county.

Russell King is one of our ext. agents in this county. Russell has helped me on several occasions in dealing with crops. I personally feel that Russell has

the knowledge, personality and leadership to serve as County Chairman.

Sincerely yours,

s/Irvin D. Smith

ATTACHMENT 8

March 19, 1982

Mr. Steve L. Medlin

Vice President

Branch Banking and Trust Company

Warrenton, NC 27589

Dear Mr. Medlin:

Thank you for your letter concerning the current Extension situation in Warren County. We are priveleged to have people such as you who are interest enough in the program to take time to write us. Please be assured that we will do everything in our power to see that we get the best Extension program possible for Warren County.

Thank you again.

Sincerely,

S/Hugh L. Liner

District Extension Chairman

dsw

ATTACHMENT 9

Mr. Hugh L. Liner

303 Ricks Hall - NCSU

Raleigh, N. C. 27607

Ref: Warren County Agricultural Extension Chairman

Dear Mr. Liner:

I recently read in the lcoal newspaper that L. C. Cooper, the present Chairman of the Warren County Agricultural Extension Service, announced his retirement effective April 30, 1982. I understand that you, through your department, will recommend a successor ro Mr. Cooper to the Warren County Board of Commissioners.

I would like to recommend that you and those of your department and committee give considerable consideration to Russell King to succeed Mr. Cooper as Chairman of the Warren County Agricultural Extension Service.

For the few years that I have known Russell, I have found him to be a very enthusiastic individual, who goes out of his way to help farmers in this area be more productive and more efficient in their livelihood, Russell has always been enthusiastic in his work and a genuine pleasure to work with. I find that he has the admiration of all the farmers in the county and many look to him as a source of guidance and leadership. He is also looked upon as an extremely important link between what is happening on the farm and the modern farming technics and knowledge that are developed at the University. He is never too busy to talk with a farmer about what may be happening in the tobacco

or aoybean field or the Saturday afternoon gardner, who is worried about discoloration in his shrub. He is always ready to do what he can to promote better farming technics in our county, while working with the old timers in helping them identify and solve specific problems.

Russell has also taken a genuine interest in the development of our young farmers through the 4-H Clubs. He is also active in taking speaking engagements to various groups, from the Future Farmers of America, 4-H Clubs, to the Wednesday afternoon Garden Club.

I also think Russell has the experience and leadership to unite the existing staff of the Warren County Extension Service, to render those services to the public for which the Extension Service was intended. I feel that he has the respect and admiration of his peers and the farmers who come into contact with him on a day to day basis.

I hope that you will consider Russell for this position and I personally feel that there is no better person in the present staff to succeed Mr. Cooper than Russell King.

Sincerely,

s/Steve L. Medlin

Vice President

RESPONSE OF DEFENDANT RUSSELL C. KING TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Filed District Court April 30, 1985

1. Employment history:

a. September 1, 1979

b. Associate Agricultural Extension Agent, 9/1/79-4/30/82 County Extension Chairman, 4/1/82 - until present.

2. Contacts with Dr. Liner:

I do not remember the first time I met Dr. Liner. My association with Dr. Liner has been on a professional level.

3. Cooper retirement:

Mr. Cooper announced his retirement

at a meeting of the extension staff. Prior to that meeting I had heard rumors that Mr. Cooper was retiring. I do not recall when or from whom I heard those rumors

4. Association with the Young Farmer's Organization:

As a part of my duties as a member of the Agricultural Extension staff in Warren County, I organized the Young Farmer's organization and served as its advisor.

5. Meetings between January 1, 1982 and April 30, 1982:

Based upon an examination of my business calendar it appears that I met with the Young Farmer's Organization on three occasions between January 1, 1982 and April 30, 1982.

6. Dates of meetings:

Based upon an examination of my business calendar it appears that I met with the Young Farmer's Organization on January 13, 1982, February 19, 1982, and

March 3, 1982.

7. Officers of Young Farmer's Organization:

I am not certain of the identity of the officers of the Young Farmer's Organization between January 1, 1982 and April 30, 1982.

8. Members of Young Farmer's Organization:

I cannot be certain of the identity of the members of the Young Farmer's Organization between January 1, 1982 and April 30, 1982. However, I believe the following persons were members during that period:

James Bowen	Willie A. Boyd, Jr.
Allen Campbell, Jr.	Pete Carroll
Tim Carroll	Bennie P. Collier
James E. Davis	Nathaniel Davis
Charlie Dortch, Jr.	Arthur Evans, Jr.
Ernest Evans	Charles Fleming
Johnny Fleming	Phillip Fleming
Wm. L. Fuller, Jr.	Andy B. Garrett
Richard N. Gupton	E. B. Harris
Jimmy Harris	Jimmy Hawks
A. H. Hight, Jr.	Mike Hight
Charles Holtzman	Gary Holtzmann
Jerry Holtzman	Richard Holtzmann, Jr.

Steve Holtzmann	Daryl Kilian
C. C. King, Jr.	Charles Lynch
Randy Martin	Donald E. Mulchi
Scott O'Neal	Wilbert Overby
Hal Paschall, Jr.	George A. Perkinson
Raeford Pernell	Greg Reese
Mike Roope	Bob Rideout
Weldon P. Rooker	William F. Rooker
Calvin J. Seaman	Raymond J. Seaman
Claude G. Shearin	W. T. Skinner, IV
Irvin Smith	Robin St Sing
Dennis Stegall	Harry Stegall, Jr.
Howard Stegall	Tommy Stegall
Tom Traylor	Ashley White
Stewart White	Leon Williams
Earl Williams	Morgan Williams
Yarborough Williams	Crandall Wilson
Henry Wilson	

c. Dr. Chester Black

March 23, 1982. Interview for County Chairman in Raleigh. I am not aware of any notes Dr. black took during the interview.

d. Irvin Smith

The following are dates that I marked in my business calendar. On some of these dates, Mr. Smith was not at home when I went to his farm. I am including all dates listed on my calendar, but I do not remember on which of these dates Mr. Smith and I actually met. I am not aware of any

notes of any of these meetings.

February 23, 1982 - Tobacco production and grain.
February 25, 1982 - Tobacco production and grain.
February 26, 1982 - Tobacco production and grain.
March 3, 1982 - Young Farmer's meeting.
March 8, 1982 - Tobacco production.
March 9, 1982 - Tobacco production.
March 11, 1982 - Tobacco production.
March 29, 1982 - Advisory Council meeting (I am not sure that Mr. Smith attended).
April 2, 1982 - Soybeans

e. Jimmy Harris

March 11, 1982 - Tifton 44 sprigs
March 18, 1982 - Tifton 44 sprigs

I am not aware of any notes of these meetings.

f. W. J. Harris

April 5, 1982 - Met with Commissioners for interview. I am not aware of any notes of this interview.

g. Clyde Edwards

April 5, 1982 - Met with Commissioners for interview. I am not aware of any notes of this interview.

h. William Skinner

April 5, 1982 - Met with Commissioners for interview. I am not aware of any notes of this interview.

i. Herbert Harris

April 5, 1982 - Met with Commissioners for interview. I am not aware of any notes of this interview.

AFFIDAVIT OF DONNA B. ROOPE
Submitted by Defendants

Filed District Court March 29, 1985

DONNA B. ROOPE, being first duly sworn, deposes and says:

I am a resident of Warren County. In March of 1982 I was serving as secretary-treasurer of the Warren County Young Farmers and Ranchers. As secretary-treasury it was my responsibility to keep the minutes of all meetings.

On March 3, 1982 the Young Farmers and Ranchers met. I was present and kept the minutes of that meeting, and have custody of the minutes of that meeting.

The attached document is a true and accurate copy of the minutes of the Young Farmers and Ranchers' meeting on March 3, 1982.

s/ DONNA B. ROOPE

Duly verified.

Attachment to Affidavit of Donna B. Roope

The Warren County Young Farmers and Ranchers met on Wednesday, March 3, 1982 at 7:00 P.M. at the Middleburg Steak House. The group enjoyed a delicious steak dinner which was sponsored by Robie Pate representing Elanco Products.

Grace was delivered by Mrs. Judy Seaman.

After dinner, the business meeting began. Russell King presided over the business meeting in Michael Roope's absence. Mr. King asked for old business at which time there was none. New business consisted of elections for new officers for 1982-1983 and program selection for the forth coming year.

There was no further new business.

The secretary-treasurer then gave the minutes and treasurer's report.

Mr. Robie Pate representing Elanco Products presented a program on chemicals produced by Elanco and their effectiveness.

Dr. R. C. Wells, professor of Economics and Business from North Carolina State University presented an interesting program on "Estate Planning." Following the presentations, a question and answer period took place.

Members inquired as to the possibility of Russell King being selected as County Extension Chairman. Upon this inquiry, Mr. King respectfully denied to make any comment at that time.

There being no further business the meeting was then adjourned.

Respectfully submitted,

Donna B. Roope

PORTIONS OF TRANSCRIPT OF
GRIEVANCE HEARING
HELD ON SEPTEMBER 9, 1982

Filed District Court April 30, 1985

In the Matter of:
Miss Emily R. Ballinger
Transcript
of
Grievance Hearing
held
September 9, 1982
in the
Warren County Courthouse
Warrenton, North Carolina

a former County Extension Chairman. .

.

Max D. Ballinger, Attorney: For this county?

Miss Emily R. Ballinger: For this county, yes.

Max D. Ballinger, Attorney: What did you do each time each of these people and other people asked you about appearing in your behalf or writing letters for you?

Miss Emily R. Ballinger: I told them that we were not supposed to have any politicking and we were asked not to do that, and that I thought it would probably

be harmful to me rather than help me, and that I thought it would be best for them not to do it.

Max D. Ballinger, Attorney: Did a group of young farmers after this appear at the County Commissioners hearing?

Miss Emily R. Ballinger: Yes sir.

Max D. Ballinger, Attorney: Was there an article written in the newspaper about it?

Miss Emily R. Ballinger: Yes sir, and there was also something also that I didn't know and that was at the time that Dr. Liner had the conference with us, he said, I don't know whether you know it or not, but that there was a meeting of young farmers with the State Extension staff in another county.

Max D. Ballinger, Attorney: Where was that meeting held?

Miss Emily R. Ballinger: I do not know for sure. I think in Louisburg, in Franklin or Nash counties. I am not positive.

Max D. Ballinger, Attorney: Did an article appear in the paper? Will you read that article to the board? It's found on page 45.

It was also on the same day Mr. King's picture was in the paper. A group of Warren County farmers.

Dr. Clauston Jenkins: We agree that it is in the record that the committee can read it. . .

not the meeting held outside the county with the young farmers and the Agricultural Extension Service was prejudicial to your efforts to get a promotion you felt you justly deserved?

Miss Emily R. Ballinger: Yes sir, I do.

Max D. Ballinger, Attorney: Tell the board why you think it was prejudicial.

Miss Emily R. Ballinger: Well, I did't know about it. I understand they were discussing the position - in the county - that was being vacated; and that I feel

that I did not know anything about it; and that the information was given that would be prejudicial to me.

Max D. Ballinger, Attorney: Were you given the opportunity to respond to anything that came up at that meeting?

Miss Emily R. Ballinger: No sir.

Max D. Ballinger, Attorney: Do you have an opinion as to whether or not your age entered into your not getting the position as contrasted to Mr. Russell King and his age?

Miss Emily R. Ballinger: Yes sir.

Max D. Ballinger, Attorney: Tell the board what your opinion is

Miss Emily R. Ballinger: Well, the. . . my opinion is that the age was asked also when I had my interview. Also another thing so far as the age difference is concerned and the discrimination. . . I was so concerned about the letter that. . . was asked at the interview in Raleigh. And I feel that that was taken into

consideration. Another thing on March 30th, we had the District Extension Homemakers meeting in Raleigh and Mr. Jack Harris, who is Chairman of the Board of County Commissioners, was asked to bring greetings for that meeting, and he did come to Raleigh for the meeting. I had told Mr. Harris where I would like for him to meet so far as lining up to go on stage. And when I went into the auditorium, Mr. Harris said. . . he was standing on the other side. I said, "Mr. Harris, you are supposed to be over there." And so he said, "Well I'm waiting to see Dr. Liner, I haven't seen him come in yet and I wanted to see him while I was here." And I said, "Well, Jack. . . " it was the first opportunity I had had an opportunity to talk with him. I said, "Jack, what in the world is going to happen?" I said, "What do you, how about the letter that Irvin Smith wrote?" And he said, "Don't worry about that." I

said, "Well, it concerns me. I don't think that it's fair to me," I said, "What's going to happen?" And he said, "Emily, you know what's going to happen." And he said, "No, I don't know what's going to happen, either." And he said, "Well, I wanted to talk to Dr. Liner about it today." And I said, "I'm real concerned about it and I think something should be done about the letter. It just worries me." He said, "Don't worry," he said "You know what's going to happen." And I said, "No, I don't." He said, "Yes, you do." I said, "Well, really I don't." He said, "Well, you're going to be Chairman, you know. Russell King hasn't been there long enough, and he doesn't have the experience."

Now Mr. Harris told me that in Jane S. McKimmon Center on March 30th. On April 5 when Dr. Liner came over and told me that Mr. Russell King had been selected as County Extension Chairman, he said,

"The Commissioners decided and it was a unanimous decision." Now somewhere between, prior to the meeting on March 30th and the end of the Commissioners meeting on April 5, Mr. Jack Harris's opinion had been changed evidently. Because he was very defintely, I mean and I was not, of course, I know that that was not an official answer, but, and, I was not trying to find out, but what my concern was that the letter Irvin Smith had written which was very definitely as I've pointed out more than one time, against me.

And I think Mr. Harris felt that it was, too, and I know that Mr. L. C. Cooper felt that it was and that Mr. Cooper had expressed concern to Mr. Harris. I understand and I know that he expressed it to Dr. Liner. And so that was discrimination. On age: I think that age probably entered into the factor when the final unanimous decision was made.

Max D. Ballinger, Attorney: Were you told at any time what the salary differential would be in your current pay scale and the pay scale of a County Chairman?

Miss Emily R. Ballinger: Yes sir. When Dr. Liner was here on the Friday afternoon before, well, the first time I asked what the difference would be was when I had the interview. I did ask, and I believe it was Dr. Dew that said, "I'll make the standard answer that it will be, there will be a difference in salary and that it will be adjusted according to, at the time. And it will be enough to take care to buy some aspirin for those headaches that might come up." And then on the Friday afternoon that Dr. Liner was here, he did so state to Mr. King and to me that the salary would be $2500.00 above our present salary and that the commissioners portion would be the same and that shouldn't present any problem there.

Max D. Ballinger, Attorney: Now can you.

. . on page 12 if it please the board, there is a typographical error in paragraph two, I believe. No, it's correct. I'm sorry. Withdraw it. Have you, had you

Mr. Jack Harris Testified on Direct Examination
for the State and in Response to Questions
of
Dr. Clauston Jenkins, its Attorney

Dr. Clauston Jenkins: Mr. Harris, will you just slide your chair over hre? Would you state your name and your position for the record, sir?

Mr. Jack Harris: I'm Walter J. Harris, Chariman of the Board of Commissioners for the County of Warren.

Dr. Clauston Jenkins: Mr. Harris, were you, did you have that position last spring in April and May when the new County Chairman was selected?

Mr. Jack Harris: I did.

Dr. Clauston Jenkins: At that time, did you select Mr. King as the Chairman? The new County Chairman?

Mr. Jack Harris: The board, the board did.

Dr. Clauston Jenkins: Do you remember the date on which the board made that decision?

Mr. Jack Harris: The regular Commissioners meeting, I believe April 5.

Dr. Clauston Jenkins: Did you make that decision before you interviewed the two candidates or after?

Mr. Jack Harris: After the interviews. After lunch.

Dr. Clauston Jenkins: After lunch. There has been reference in this testimony to a meeting that apparently occured in the morning in which somebody has alleged that you were discussing the county chairman. Do you remember that meeting in the morning prior to the interviews?

Mr. Jack Harris: As I recall, the meeting with Dr. Liner was to go over with the County Board the procedures that were used in selection of the county chairman.

Dr. Clauston Jenkins: Okay, so at that time, you did not discuss which candidate you would select, is that right?

Mr. Jack Harris: No sir, we did not.

Dr. Clauston Jenkins: Did you then have, did you interview the candidates in the afternoon; both candidates, Mr. King and Miss Ballinger.

Mr. Jack Harris: We did.

Dr. Clauston Jenkins: Did you make your selection after that time?

Mr. Jack Harris: The selection was made after the interviews with the two candidates.

Dr. Clauston Jenkins: After. In the process after the County Extension Service or the Agricultural Extension Service submitted two names to you, to the County Commissioners that was Miss Ballinger and Mr. King.

Did anyone from the Agricultural Extension Service administration, specifically Dr. Black, Dr. Dew, Dr. Liner, approach you

and indicate that the Extension Service favored one of the candidates over the other?

Mr. Jack Harris: They did not.

Dr. Clauston Jenkins: Did anybody approach you in support of the candidates, either of the candidates? Members of the public or other Extension personnel?

Mr. Jack Harris: Previously, there had been people approach me on behalf of each of those two.

Dr. Clauston Jenkins: Do you, okay, did anybody write you any letters about it or do you remember?

Mr. Jack Harris: No sir, no letters were written. Or I did not receive any letters on behalf of either.

Dr. Clauston Jenkins: We've had discussion here of a testimony about a letter to the editor from a Mr. Irvin Smith about the Extension Service and it was a, we've, maybe you were here. Were you here when that was read?

Mr. Jack Harris: I was.

Dr. Clauston Jenkins: Okay, you're familiar with that letter to the editor. Did that letter from Mr. Smith influence the Commissioners or as far as you can tell, the Commissioners' selection of a County Chairman?

Max D. Ballinger, Attorney: I object to that question. No objection for what it did to him.

Dr. Clauston Jenkins: I asked you as far as you could determine for yourself?

Mr. J. D. Dodson: As far as he was concerned.

Mr. Jack Harris: No.

Dr. Clauston Jenkins: Do you remember what Mr. Smith's main concern was?

Mr. Jack Harris: The concern that he voiced was basically the same concern that had been voiced by several of those who had contacted me. They were more interested in a livestock agent being assigned to Warren County than they were

in who would become County Chairman.

Dr. Clauston Jenkins: Okay, do you recall a discussion you had with miss Ballinger in Raleigh on March 30th that she just recounted in which you apparently told her that you thought she would be the next County Chairman?

Mr. Jack Harris: Basically yes. And I have no question as to whether or not I said that. I'm sure I did at that time.

Dr. Clauston Jenkins: Would you be in a position to remember what it was that caused you to change your position if that was really your position, or was it just politeness at that time?

Mr. Jack Harris: Well, I thought due to her time of service that she would be the one that was recommended. I did not know that there would be more than one person recommended, due to the situation three years prior to that time.

Dr. Clauston Jenkins: So at the time, you hadn't had the candidates recommended to

you by the Extension Service?

Mr. Jack Harris: No sir, that's one reason I wanted to talk to Dr. Liner that day. I'll be perfectly honest with you, I asked him and he flatly refused to tell me. He would not give me the decision that had been made, if one had been made at that time.

Dr. Clauston Jenkins: So at that time, you did not know that Mr. King would be recommended?

Mr. Jack Harris: I did not know who would be recommended.

Dr. Clauston Jenkins: You did not have any recommendation from the Extension Service?

Mr. Jack Harris: No sir.

Dr. Clauston Jenkins: So your statement to her was just your so-called educated guess based on what you knew at that time?

Mr. Jack Harris: Due to the experience that she had, I felt that she would be the one person recommended.

Dr. Clauston Jenkins: When you had the interview, did you ask the candidates a question?

Mr. Jack Harris: We did.

Dr. Clauston Jenkins: Were you able on the basis of the way the candidates responded to the questions to form an opinion as to which of the candidates would make the best County Chairman?

Mr. Jack Harris: Based on the answers that were given that day, after the interviews when the board was discussing the qualifications and discussing the answers that were given by each of the candidates, it was the consensus of the board at that time that Mr. King's answers were more concise, he was more direct, more to the point, that Miss Ballinger, while her answers did relate pretty much to the subject at times, was very hesitant in giving an answer and appeared to be stressing more work toward 4-H programs and Home Demonstration Clubs or the

Community Clubs, while Mr. King was stressing not any one particular program, but what he felt would be an overall or what he felt could lead into an overall improvement in the entire program.

Dr. Clauston Jenkins: And now, is that one of the bases for making the decision to recommend Mr. king?

Mr. Jack Harris: It was.

Dr. Clauston Jenkins: Let me show you something that is marked "Index" and it is numbered with pages A-1 through A-13, and it's called "Preface to Proposed Agricultural Extension Program for Warren County" and then it's a discussion of an Extension plan for Warren County. A ten-year plan. It has been prepared by Miss Ballinger. Let me ask you if this was ever given to the commissioners at the time she was a candidate.

Mr. Jack Harris: No sir. I don't recall ever seeing it.

Dr. Clauston Jenkins: Okay, so she did

not present to you her ten-year plan or did not make any mention of a ten-year plan to you at the time?

Mr. Jack Harris: No sir.

Dr. Clauston Jenkins: Were you familiar with Miss Ballinger's work through your experience as a resident of the county as a County Commissioner?

Mr. Jack Harris: Yes, I was.

Dr. Clauston Jenkins: Were you able to. . . were you familiar with the work of Mr. King?

Mr. Jack Harris: I was. I've known, I had known Mr. King probably 15 years; had known Miss Ballinger, well frankly, considerably longer than that because Miss Ballinger was involved in 4-H work when I was in high school.

Dr. Clauston Jenkins: On the basis of your knowledge, on the basis of the interview that you had, were you able to reach a conclusion as to which of the candidates would be the better County

Chairman?

Mr. Jack Harris: The Board as a whole felt that it would be better for Warren County if Mr. King was appointed Chairman.

Dr. Clauston Jenkins: Okay, do you recall whether or not the resume, the contents of the candidates' resume played a major part in that decision?

Mr. Jack Harris: They, the resumes did not play a major part, although they were both considered, they were both discussed.

Dr. Clauston Jenkins: I don't have any further questions.

(Conclusion of Direct Examination of Mr. Jack Harris)

Mr. J. D. Dodson: I'm sure Mr. Harris is a busy man. Do you want to cross and limit it the best you can so he can get gone?

Mr. Jack Harris Testified on Cross Examination in Response to Questions by Max D. Ballinger, Attorney

Max D. Ballinger, Attorney: Do you have the resumes there with you?

Mr. Jack Harris: Yes I do.

Max D. Ballinger, Attorney: May I see them please?

Mr. Jack Harris: Are you speaking of each of them?

Max D. Ballinger, Attorney: Yes sir. Now do you know whether this is the first resume which Mr. King presented or his second resume?

Mr. Jack Harris: That is the only one I have knowledge of.

Max D. Ballinger, Attorney: Do you have any minutes of the meeting? Were there minutes made of the meeting?

Mr. Jack Harris: Were there minutes made of the?

Max D. Ballinger, Attorney: County Commissioners meeting?

Mr. Jack Harris: Oh, yes.

Max D. Ballinger, Attorney: Was there a recording made?

Mr. Jack Harris: There was not a recording made.

Max D. Ballinger, Attorney: Do you have those minutes with you?

Mr. Jack Harris: No, I do not.

Max D. Ballinger, Attorney: Could you make them available to me after lunch?

Mr. Jack Harris: They are recorded downstairs in the Commissioners book and are available to the public.

Max D. Ballinger, Attorney: All right. Could you tell me where to find it?

Mr. Jack Harris: The Register of Deeds' office.

Max D. Ballinger, Attorney: What was the vote on Miss Ballinger's selection as County Chairman or Mr. King's selection as County Chairman; do you recall?

Mr. Jack Harris: The vote was unanimous among the four members attending for Mr. King.

Max D. Ballinger, Attorney: Did you remember the names of any persons who spoke with you on behalf of Mr. King?

Mr. Jack Harris: I do.

Max D. Ballinger, Attorney: Who were some of them? Who were they?

Mr. Jack Harris: William Brauer, James Harris, Jr., Glenn Riggan, several others; specifically, I cannot recall.

Max D. Ballinger, Attorney: Who spoke to you on behalf of Miss Ballinger; do you recall?

Mr. Jack Harris: Mr. Cecil Pope.

Max D. Ballinger, Attorney: Anyone else?

Mr. Jack Harris: I think I had conversations with approximately two dozen people in the period of time after Mr. Cooper announced his intention to retire. And of those that spoke to me about the position of Chairman, I think there probably were three or four that spoke on Miss Ballinger's behalf; there were others that spoke specifically on Mr. King's behalf; the majority of those that spole with me were livestock agents, and they were more concerned with the livestock agent than they were in the Chairmanship.

Max D. Ballinger, Attorney: Now, prior to three years ago, when Mr. L. C. Cooper was designated as the County Chairman, who was your County Chairman here?

Mr. Jack Harris: Mr. L. B. Hardage.

Max D. Ballinger, Attorney: How long had Mr. Hardage been County Chairman? For many, many years?

Mr. Jack Harris: Some few years. He was appointed Chairman upon the retirement of Mr. Frank Reams.

Max D. Ballinger, Attorney: How long had Mr. Williams, Mr. Frank Williams, been the County Chairman?

Mr. Jack Harris: Mr. Reams had been. . .

Max D. Ballinger, Attorney: Mr. Reams, I mean.

Mr. Jack Harris: Mr. Reams had been Chairman I guess, well, to be perfectly honest with you, I do not know because I was not in the county at the time of his real appointment.

Max D. Ballinger, Attorney: All right.

Were you on the Board of County Commissioners when Mr. Hardage was designated as County Chairman?

Mr. Jack Harris: I'm not sure.

Max D. Ballinger, Attorney: That you would recall, what the selection process was at the time, would you?

Mr. Jack Harris: Not at that time, no.

Max D. Ballinger, Attorney: Now, were you on the Board of County Commissioners at the time Mr. L. C. Cooper was selected County Chairman?

Mr. Jack Harris: I was.

Max D. Ballinger, Attorney: Now, what was your understanding of the procedure at that time? Did you understand that the County Chairman was an employee of North Carolina State Agricultural Extension Service?

Mr. Jack Harris: I did.

Max D. Ballinger, Attorney: And did you understand that they were the ones that made the determination with reference to

who they would, wanted, as County Chairman?

Mr. Jack Harris: As I recall, it was explained to us at that time that they made a recommendation to the Board of County Commissioners and the Board of County Commissioners could concur in that recommendation or they could reject it.

Max D. Ballinger, Attorney: It had never been known to happen in North Carolina that the County Commissioners had ever rejected a recommendation of the Agricultural Extension Service, was it?

Mr. Jack Harris: I cannot answer the question. I do not know.

Max D. Ballinger, Attorney: But you had no choice in the matter at the time Mr. Cooper was submitted except to say yes or no. Is that right?

Mr. Jack Harris: As I understand it at that time when the recommendation was made, the consensus of the Board was to accept the recommendation.

Max D. Ballinger, Attorney: All right, now at the time Miss Ballinger came on for selection, you were rather surprised to find that two people, the names of two people were mentioned from Raleigh, were you not?

Mr. Jack Harris: That is correct.

Max D. Ballinger, Attorney: And you stated when the. . . there had been a great deal of pressure among the young farmers for a young man in the County Chairmanship, had it not?

Mr. Jack Harris: No sir.

Max D. Ballinger, Attorney: And at the time you selected Mr. King, was it not your feeling that a man would be better in the COunty Chairmanship than a woman under the circumstances as they existed at that time?

Mr. Jack Harris: That was the consensus of the Board.

Max D. Ballinger, Attorney: Was it the consensus of the Board that a younger

person might add something to the program here in Warren County than an older person might not be able to add to it?

Mr. Jack Harris: I do not believe that was discussed at any length and I don't think there was a consensus arrived at that meeting.

Max D. Ballinger, Attorney: Well, was that your observation; your opinion?

Mr. Jack Harris: No. We looked at the resumes that were submitted. We looked at the answers to questions that were asked at the interviews. Without a doubt, the input of the Young Farmers did have some bearing on the selection process. Yes, that I will admit. We made our selection based on who we thought would be the best Chairman for Warren County at this time.

Max D. Ballinger, Attorney: And the Young Farmers were very outspoken on the fact that they wanted a man as County Chairman, were they not?

Mr. Jack Harris: No sir. The majority of

the Young Farmers spoke on behalf of the University furnishing the county with a Livestock Agent. They did not voice that much concern over who was County Chairman.

Max D. Ballinger, Attorney: I noted that the article, is that article on page 44? Page 9, I guess.

Dr. Clauston Jenkins: Page what?

Max D. Ballinger, Attorney: Page 9.

Dr. Clauston Jenkins: Oh, page 9.

Max D. Ballinger, Attorney: I notice in next to the last paragraph, "Mr. Farmer, now is the time to wake up and be counted. Do you want a chairperson who knows the needs of the farmers and is trained in Agriculture, or one who will delegate authority from the office?" Have you read that?

Mr. Jack Harris: I have.

Max D. Ballinger, Attorney: Now, that's pretty strong outspeaking for a man as the County Chairman, isn't it?

Mr. Jack Harris: I would not necessarily

think so.

Max D. Ballinger, Attorney: Were you present at a meeting outside the county with the Young Farmers and the Agricultural Extension Service?

Mr. Jack Harris: No, I was not.

Max D. Ballinger, Attorney: Are you aware that such a meeting was held?

Mr. Jack Harris: I am now aware of it.

Max D. Ballinger, Attorney: I notice these resumes are photocopies. May I have these two?

Mr. Jack Harris: They are the only ones I have sir.

Max D. Ballinger, Attorney: Can I make a photocopy of them at the lunch hour and return it to you? Where is your office? Do you have an office here in the building?

Mr. Jack Harris: No sir.

Max D. Ballinger, Attorney: Down the street on the left?

Mr. Jack Harris: This end on the right as

you head back out toward Raleigh.

Max D. Ballinger, Attorney: I thought it was on the left as you headed toward Norlina?

Mr. Jack Harris: I got one there, too.

Max D. Ballinger, Attorney: Your office is down here at the end of the street?

Mr. Jack Harris: I got one at both ends.

Dr. Clauston Jenkins: He gets you coming or going.

Max D. Ballinger, Attorney: One way or another, may I have. . .

Mr. Jack Harris: Normally, I am down in the office of Sun Savings and Loan.

Max D. Ballinger, Attorney: All right, may I return this to you after. . .

Mr. Jack Harris: You can do that and it will be perfectly alright; if you want to, you can leave them with the Clerk of Court.

Max D. Ballinger, Attorney: Could I mail them back to you? Would that be acceptable? You don't need them today, do

you?

Mr. Jack Harris: Not that I know of. I could probably get other copies.

Max D. Ballinger, Attorney: All right, if I may mail them back to you, I'll just make the photocopies in my own office, and mail them back to you.

Mr. Jack Harris: It will be fine.

Max D. Ballinger, Attorney: Did you ask Miss Ballinger about her plans for the County Agricultural position if she was selected?

Mr. Jack Harris: I asked each candidate a series of ten questions; the same questions.

Max D. Ballinger, Attorney: Do you have them with you?

Mr. Jack Harris: I do have them with me.

Max D. Ballinger, Attorney: Could I see them?

Mr. Jack Harris: And I do not have an extra copy of these. If you'd like one, I'll have one made and give it to you.

Max D. Ballinger, Attorney: All right, sir. I would like that.

Mr. Jack Harris: All right.

Max D. Ballinger, Attorney: Do you have a photocopy machine handy; if I could just get them all at lunch hour sometime. If that will be all right. . .

Mr. Jack Harris: It will be fine.

Max D. Ballinger, Attorney: At the time I asked you if Miss Ballinger did not state essentially what is in this proposed plan that has been identified by pages AA through 13?

Mr. Jack Harris: I have not seen the plan, sir.

Max D. Ballinger, Attorney: If that is not in essence what she told you when you asked her these ten questions.

Mr. Jack Harris: I can't answer the question; I've not seen the plan.

Max D. Ballinger, Attorney: Would you glance at it briefly? If you would please, your counsel has it.

Mr. Jack Harris: . . .the questions that were asked or some of the questions that were asked.

Max D. Ballinger, Attorney: Do you seem to recall that those were essentially the answers that she gave the Board on those issues?

Mr. Jack Harris: I would have to answer that no, because what I see here is quite lengthy and the answers she gave basically were fairly short, with the exception of one or two.

Max D. Ballinger, Attorney: All right. What I'm asking is that the essence of what she explained? The A-1 through A-13 is that not the essence of what she explained in the short answers that she gave?

Mr. Jack Harris: Some of the questions didn't relate to this at all.

Miss Emily R. Ballinger: Mr. Harris,

Max D. Ballinger, Attorney: Who prepared these questions?

Mr. Jack Harris: Who prepared them?

Max D. Ballinger, Attorney: Yes sir.

Mr. Jack Harris: They were prepared by the county attorney at my request.

Max D. Ballinger, Attorney: All right. And he typed them? Had them typed?

Mr. Jack Harris: He did it himself.

Max D. Ballinger, Attorney: After the selection was made, was there some concern among some citizens of the county that Miss Ballinger had not been selected?

Mr. Jack Harris: I was approached by, well, one specifically approached me as I entered the hospital to visit Mr. George Shearin, a County Commissioner, the time I walked in. She voiced her concern that the commissioners did not select Miss Ballinger; however, the same individual expressed her sentiments about Mr. King being selected in that she had to live with a house full of men and she knew exactly where it came from./

Max D. Ballinger, Attorney: Did you tell

her if Miss Ballinger had been a man she probably would have been selected?

Mr. Jack Harris: I do not recall.

Max D. Ballinger, Attorney: You don't deny that you did.

Mr. Jack Harris: I could have done that, but I honestly do not remember.

Max D. Ballinger, Attorney: You had told some people, had you not?

Mr. Jack Harris: Specifically, I do not recall. I would have to say no since I do not recall. it is possible that I may have, but I would honestly have to answer no.

Max D. Ballinger, Attorney: Those were your thoughts at the time, though, were they not?

Mr. Jack Harris: I was quite surprised, to be perfectly honest with you, that the University recommended two people to us. They had not done so before and I, of course, assumed that the same thing would be true in this case.

Max D. Ballinger, Attorney: And you had never known of a practice in any county to submit two people to the County Commissioners before, had you?

Mr. Jack Harris: I had not been faced with it but once before, three years prior to this time.

Max D. Ballinger, Attorney: And you had never heard of it elsewhere in the state?

Mr. Jack Harris: Had no reason to hear of it.

Max D. Ballinger, Attorney: Now, at the time on April 5 when the selection was considered, you said that Dr. Liner met with you that morning at 11:30?

Mr. Jack Harris: Yes sir.

Max D. Ballinger, Attorney: And he was only with you a few minutes, was he not?

Mr. Jack Harris: He was with us probably 15 minutes maybe.

Max D. Ballinger, Attorney: Right. Then you didn't break up the meeting until about 12:50, did you?

Mr. Jack Harris: That is correct.

Max D. Ballinger, Attorney: So you met for about an hour and five minutes without Dr. Liner, did you not?

Mr. Jack Harris: That is correct. I might add to that so that the selection process was not that only thing discussed in that meeting. We reserve matters involving personnel and legal problems to the end of our normal meeting and those items are discussed in executive session. Dr. Liner, of course, involved personnel. We listened to him at that time. He was excused and then we went into other matters.

Max D. Ballinger, Attorney: The lady whc spoke with you at the hospital observed that there was very strong sentiment among the men to have a male County Chairman, didn't she?

Mr. Jack Harris: She did.

Max D. Ballinger, Attorney: And you were aware of that sentiment also, were you

not?

Mr. Jack Harris: I was.

Max D. Ballinger, Attorney: And as County Commissioner, you were seeking to satisfy the demands of your constituents, were you not?

Mr. Jack Harris: Up to a point. Yes sir.

Max D. Ballinger, Attorney: Thank you. I have no further questions.

Mr. J. D. Dodson: Let's take a lunch break. Is there any reason for Mr. Harris to come back this afternoon?

Max D. Ballinger, Attorney: No.

Mr. J. D. Dodson: From either side? Okay. I appreciate your coming. Let's be back at quarter till two.

(Conclusion of Testimony of Mr. Jack Harris)

Mr. J. D. Dodson: Let me just make a comment or two before we do get started.

I failed to remind the panel members that they shouldn't discuss the situation within anyone; I hope you didn't. If you

did, try to ignore whatever you heard outside this room. Just base your decision on whatever facts are presented in the room.

Also, I'd like to ask both sides, if they could and would, to restrict their testimony, etc. to pertinent issues in the case. I'm supposed to be in Edenton by bedtime tonight, and I've got to go back to Raleigh before I start. And Mr. Jenkins is supposed to be in Chapel Hill at five. So I'm not sure either one of us will make it, but if you would, help us as much as you can by sticking to the pertinent issues.

The pertinent facts involved in the issue; so the grievant side, I believe, still had a few more comments, etc. to make. Go right ahead.

Miss Emily R. Ballinger Testified Further in Response to Questions by Max D. Ballinger, Attorney

Max D. Ballinger, Attorney: Miss Ballinger, you saw the resume which Mr.

Harris had from Mr. Russell King?

Miss Emily R. Ballinger: Yes sir.

Max D. Ballinger, Attorney: Is that the same resume that was prepared in the office on March 30, 1982, by Mr. King?

Miss Emily R. Ballinger: Yes sir.

Max D. Ballinger, Attorney: This is not the first application, if there was a first application, then is it?

Miss Emily R. Ballinger: Well, I didn't see the first application.

Max D. Ballinger, Attorney: All right; fine.

Miss Emily R. Ballinger: The first resume that was made. . . but I do know he prepared one on March 30.

Max D. Ballinger, Attorney: Mr. Harris testified as to a conversation with a young lady at the hospital I believe. Did she make any statements to you with reference wo what Mr. Harris told her?

Miss Emily R. Ballinger: Yes sir.

Max D. Ballinger, Attorney: Tell the

board what she stated to you.

Miss Emily R. Ballinger: She said she saw Mr. Harris when she was working at Maria Parham Hospital, and she got after him about the appointment of County Extension Chairman, and as a part of her conversation with him, she said, "Well, if Miss Ballinger had been a man she probably would have gotten the job, wouldn't she?" He said, "Yes, I expect so."

Max D. Ballinger, Attorney: Now with reference to Mr. Harris's comment that you were hesitant in answering some of the questions in some of the areas, would you explain to that panel, please, and exactly how that came to be.

Miss Emily R. Ballinger: Yes sir, I will, There were questions asked, and maybe I didn't explain them quite fully as they could have been explained. But through the past three years, I have been criticized on occasion by Dr. Liner.

Max D. Ballinger, Attorney: Had he told,

did you have conversation about the newspaper article with Dr. Liner?

Miss Emily R. Ballinger: Not that day.

Max D. Ballinger, Attorney: Before?

Miss Emily R. Ballinger: Oh, yes, I had before.

Max D. Ballinger, Attorney: Had each of you been asked not to make comments, political type or other, with reference to the work of the other persons employed?

Miss Emily R. Ballinger: The whole staff had been asked not to do it.

Max D. Ballinger, Attorney: And in connection with your answering the questions to the County Commissioners, did you exercise that reservation which you had been asked to exercise?

Miss Emily R. Ballinger: Yes sir, I did.

Max D. Ballinger, Attorney: Does that explain how you came to. . .

Miss Emily R. Ballinger: Well, I didn't want to overstate some suggestions that maybe. . .

Max D. Ballinger, Attorney: Did you wish not to be critical of the County Agricultural end of it? Is that what you thought?

Miss Emily R. Ballinger: That's right, as it presently stood.

Max D. Ballinger, Attorney: And the questions that were asked you, to have answered them, would have involved a critic of the. . .

Miss Emily R. Ballinger: Present situation.

Max D. Ballinger, Attorney: Present situation, is that not true?

Miss Emily R. Ballinger: Yes sir.

Max D. Ballinger, Attorney: And in following Dr. Liner's admonitions you were being asked by the County Commissioners on one hand to tell them what Dr. Liner told you not to say to anybody. Is that right?

Miss Emily R. Ballinger: Well, in essence, yes.

Miss Emily R. Ballinger: I'd like to

offer these questions into the record, I was provided with not the very best of copy, I just offer into the record. I would really like to have a copy of it, I'm sure everyone here would. I just offer them in for consideration by the board. I have no other questions.

Mr. J. D. Dodson: In all fairness, I think we have to give the other side a chance to cross, since we covered things that hadn't been covered when. . .

Dr. Clauston Jenkins: I don't have any objection to your showing that to the committee or anything. Go ahead. Miss Ballinger, I just have one question for you.

Miss Emily R. Ballinger: Yes sir.

Dr. Clauston Jenkins: This material we refer to as appenidx A, was that written at the time you had your interview with the committee?

Miss Emily R. Ballinger: It was not typed up in this form, but it was written.

Dr. Clauston Jenkins: Why is some of it dated June if it was? Described as June if it were written in April?

Miss Emily R. Ballinger: It was rewritten to be handed in. The original hearing was set for June, and the material was prepared dated for that original hearing.

Dr. Clauston Jenkins: No further questions.

Max D. Ballinger, Attorney: The hearing, for the board's information, had been continued a couple of times.

Miss Emily R. Ballinger: The hearing had been continued a couple of times.

(Conclusion of Testimony of Miss Emily R. Ballinger)

Mr. J. D. Dodson: Oh, yes. Okay, the opposition go ahead.

Dr. Clauston Jenkins: I have no further questions.

Dr Paul E. Dew testified
in Reponse to Questions of
Dr. Clauston Jenkins

Dr. Clauston Jenkins: Okay, my next

witness is Dr. Dew. Dr. Dew, for the record, state your name.

Dr. Paul Dew: Paul E. Dew, Assistant Director, County Operations, North Carolina Agricultural Extension Srevice.

Dr. Clauston Jenkins: Dr. Dew, in order to save time, I'm going to ask you to in a narrative form, describe the procedure used when you fill a County Chairman position within the Agricultural Extension Service within the state of North Carolina. This is the general procedure.

Dr. Paul Dew: Okay, for sake of time, let me also start out with this Memorandum of Understanding that they may or may not be familiar with. Starting back in 1957, there is in North Carolina a written Memorandum of Understanding with each of the 100 Boards of County Commissioners. This last one was revised in 1979, spelling out roles and relationships and things that both parties in this cooperative

Dr. Hugh Liner Testified
in Response to Questions by
Dr. Clauston Jenkins

Dr. Clauston Jenkins: If no further questions for, the next witness is Dr. Liner. Dr. Liner, would you state your name and title for the record?

Dr. Hugh Liner: My name is Hugh Liner. I'm a District Extension Chairman for the North Central District.

Dr. Clauston Jenkins: Dr. Liner, would you in a narrative fashion, in order to save the time of questions and answers, go over the procedure that was used in Warren County to fill the District. I mean to fill the County Chairman's position.

Dr. Hugh Liner: Be glad to. After getting the letter of retirement from Mr. Cooper, I wrote a note to Dr. Dew suggesting that we advertise the position for to be filled which is normal procedure. Called Mr. Cooper and asked if he would get me a date on the County Commissioners calendar and set up a

meeting with the Warren County staff.

On the first of March, I met with the Commissioners and I went through the Memorandum of Understanding precisely like Dr. Dew indicated. Went through the process in advertising, in interviewing, and identifying candidates for recommendation to the County Commissioners.

The only question that was asked I think at that time from the Commissioners, I think Mr. Shearin asked me what was the minimum requirement for Extension Chairman.

I explained to him it was six years or equivalent with a mimimum of two years with the Ag Extension Service with the Masters Degree counting as one year.

I then met with the staff. I'm not totally sure that every member of the staff was there, but I think most of them were. And at this meeting, I went through the process exactly like I did with the

commissioners with the Memorandum of Understanding, explaining the process to them that we had a memorandum agreement of what we would do and what the County Commissioners would do.

That, then I asked if any of them wanted to talk with me, and Miss Ballinger, Mr. Koonce, and Mr. King each visited with me and indicated that each of those persons wanted to make application. Which they did.

Then we went through the interview process as Dr. Dew has discussed. We agreed to recommend both Miss Ballinger and Russell King for the position to the County Commissioners. I called Mr. Jack Harris and asked for conference with him, and he indicated that he was coming to Raleigh on March 30th for an event, and it would conserve energy to meet with him at that time. That as on the 24th of March.

On the 30th, I met with him and I discussed with him the possibility of us

recommending two people for this position and if that would create any situation with regard to the County Commissioners, that he didn't think it would be what they might want.

He did not commit himself at that time but he did say he would like to talk to somebody else and see what their feelings were.

And I indicated that I could come by his office around four o'clock on April 2nd to discuss what he had found out with regard to whether this would be satisfactory.

He did ask me at that time what two people that we were thinking about recommending, and I told him I did not want to agree to go into that at that particular time.

We were just looking to see if it would be acceptable with the Board for us to offer two people.

I called Miss Ballinger and Mr. King,

and I set up an appointment for them at 4:30 on April 2nd.

On April 2nd, I went by to see Mr. Harris at his office. And he indicated it would be all right for us to recommend two people.

And it was at this time that I told him that Miss Ballinger and Mr. King were the two people that we're going to recommend.

And, as you've heard, I indicated that we were recommending that there be a $2,500.00 increase in salary and that Warren County contribute $7,000 toward whichever one was selected. Now, I think it is pretty obvious why he did that. We didn't want to show a preference to any one perrson. He felt like that was a good decision and that he felt that they would pay that amount regardless of which one was selected.

I proceeded from his office to the County Agent's office or the Extension

Office. And as I walked down the hall; Mr. King was at his desk, and I asked him would he please come to Miss Ballinger's office. That was the only comment that was made at that point. And when I and he went into Miss Ballinger's office, as Miss Ballinger explained, I explained to them that we were going to recommend both of them for the position. And I explained that I wanted to talk with both of them together so they would hear exactly what I had said; so that one would no get one version and one get another. Explained about the salary.

And as I recall, Miss Ballinger did raise the issue of the letter. And I did indicate to her that I did not feel that a letter written by a private citizen to the editor of the paper would be a significant issue for the County Commissioners to make a decision. That's how I felt at that point. That's how I feel at this particular point.

So whether that was a casual statement or not, I don't know. But I didn't feel like it would be a significant factor in the selection of a County Extension Chairman.

I did suggest that they not go out and politic for the position. We feel like that's a statement that we give all counties and charge all counties when we're in this situation. We feel like it's not good for the Extension Service.

As Miss Ballinger mentioned, I said that any one of you could bring fifty here and the other one get selected. Immediately, you got fifty people against the one that was selected, so we just feel like that's not a good issue and we feel like anybody that we recomend for County Extension Chairman certainly should be able to get a lot of people to support them. So we don't feel like it's an issue whether one can get people and the other can't, so we just recommend that they not

do that.

We, then, the next day or two, I'm not sure. . . We've heard a lot about a resume. I'd like to explain what happened at this point. I think it was on the following Monday. I'll have to back up. It was the following Monday after the interview.

I was discussing something with Mr. King on the telephone. He indicated to me that he had left out some things on his resume and I suggested that he send another one. I didn't feel like at that point that it was a big issue, and I felt like in all fairness, if he had left something out that was significant, that for him to send it in. And that's the basis for this resume.

Okay, on the seventh of April, I came to the County office about 10:30 and I visited with Mr. Koonce, As you recall, he also was an applicant for this position. And I went in and explained to

him that we were not going to recommend him for the position. I feel like that we owe this to our people whenever possible to sit down and talk to those people who are not selected which I did, and told him that he would not be recommended.

I then proceeded to the County Commissioners meeting in the Courthouse and, in an open meeting before lunch, I made a recommendation to the Board of Commissioners that we were recommending Mr. King and Miss Ballinger for the position.

I explained that both of them met the minimum qualifications for this position. And we would support either of the people that they felt like was best suited in their opinion for Warren County. At no time during this or after did I make any sort of preference to the Commissioners as to who we wanted, as Mr. Harris explained that to them this morning.

The only other discussion that took

place before lunch, Mr. Harris told me in the official meeting that Mr. Irvin Smith had met with the Board earlier that morning with a resolution that the Extension Service hire a qualified livestock agent.

I assured the Commissioners that we would not bring a candidate for that position unless he were qualified. To date, we have not hired a livestock agent. I've sent one up here, and he decided he didn't want to come. I have another one interviewing Monday for this position.

The Commissioners adjourned after lunch and then they went into executive session and interviewed Miss Ballinger and Mr. King. I did not participate in that interview. I was present.

There was one question asked me. Mr. Skinner asked me were there other female chairmen and what kind of job that they were doing. I explained to him I thought that there were six, and that I felt their

average performance was equal to the average performance of the male County Chairman in the state, I explained.

They then selected and discussed and selected Mr. King. I proceeded from their office straight to Miss Ballinger's office and explained to her that they had accepted Russell King as County Extension Chairman. That's basically how I recall the process that we went through with this one.

Dr. Clauston Jenkins: Okay, to your knowledge, was there any contact made with the County Commissioners by the Agricultural Extension Service Administration on behalf of one candidate or another between the time that the Commissioners were informed that there were two candidates and the time when they're selected?

Max D. Ballinger, Attorney: I've no objection to his contacting them, but I object to what the County Extension

Service is pretty big... I don't believe he can answer it correctly.

Dr. Clauston Jenkins: I asked to his knowledge.

Mr. J. D. Dodson: To his knowledge. If he has knowledge of it, I'll let him go ahead and answer.

Dr. Hugh Liner: To my knowledge, there was no contact.

Dr. Clauston Jenkins: Okay, did in your discussion of the candidates in the Agricultural Extension Service decision to send forward two candidates or determine which candidates to send forward, did you, did the age of the candidates ever come up as an issue?

Dr. Hugh Liner: To my recollection, it was never an issue. It was never discussed.

Dr. Clauston Jenkins: All right. Changing a little bit from this process, or getting to it a little bit.

You mentioned that Mr. Harris in the

meeting mentioned to you an Irvin Smith and that there was a concern about a livestock agent. Getting a livestock agent. Did you have a meeting with these people in another county?

Dr. Hugh Liner: This meeting that has been discussed I think I can manufacture at this point. Reconstruct it at this point would be a better word.

Dr. Clauston Jenkins: Yes.

Dr. Hugh Liner: Somebody, some livestock agent, it may have been Mr. Smith, I'm not sure, contacted Dr. Black, the Director, about the fact that they did not have a qualified livestock agent in this county and in their opinion, had not had a qualified black livestock agent. I'm sorry; they had not had a livestock agent that had been of the quality that they wanted. That was their concern.

Dr. Dew called me and said Dr. Black has set up a meeting with these people in Louisburg and that he would like for me to

go with him and Dr. Black to that meeting. Now the meeting took place, and I don't remember, maybe I have the date, the 11th of March.

And the jist of this meeting was that the livestock industry was a big industry in this country. They did not feel that they had in the past had adequate leadership from the Extension Service in the area of livestock. And the jist of it was if you cannot send us a qualified livestock agent, they would rather not fill the position.

There was some discussion about County Extension Chairman that peripherated the meeting somewhat.

Some of the people had very kind things to say about Miss Ballinger.

Some of the people had very kind things to say about Mr. King.

On the other hand, the general consensus of this meeting was, we don't care about who you get for the County

Extension Chairman, be it black, white, male, or female. We want a livestock agent in this county. And that's basically how I recall that meeting. The purpose of the meeting certainly was not one to discuss the County Extension Chairman.

Dr. Clauston Jenkins: Okay, thank you for clarifying that point for us.

Now we've had a great deal of testimony about political quote, and I use this in quotes, "about the candidates being told not to politick," and you mentioned that earlier.

Was this in essence a gag order on the people. How do you interpret this?

Dr. Hugh Liner: No, what we told and what we said exactly - or I said exactly the same thing in this county that I said in every other county in which we hire the County Extension Chairman - is that we feel like that this process of selecting the County Extension Chairman is not one

that should be gained by a political pressure group, but rather by leadership ability that has been recognized over the years.

The understanding of the total Extension Service - and that we feel like that through the process that we have, that we can select the best candidate rather than getting involved with a political pressure group - cause we feel like in the long run, that is not good for the Extension Service.

Dr. Clauston Jenkins: Let me turn now to another item.

This article on page 44 of Miss Ballinger's material; the newspaper article stating that Russell King is selected Warren Extension Chairman, as written by Tom Byrd. Could you tell me how that came about?

Dr. Hugh Liner: I brought it with me when I came from Raleigh.

However, when the decision was made,

I made real sure that I gave the envelope that had Russell King's name on it to the Board of Commissioners rather than the one that had Miss Ballinger's name on it. I had two news releases written, or Mr. Byrd had one for each and we, I, was to give the Board of Commissioners or the newspaper a copy of the one that was selected.

Dr. Clauston Jenkins: So at the time you went to the meeting, you didn't know which one was going to selected so you had a news story on each of them?

Dr. Hugh Liner: Absolutely. Had no idea which person it would be.

Dr. Clauston Jenkins: No further questions.

Mr. J. D. Dodson: Do you have questions for this witness?

Dr. Hugh Liner Testified
in Response to Questions of
Max D. Ballinger, Attorney

Max D. Ballinger, Attorney: Do you have

the news story with you on Emily Ballinger?

Dr. Hugh Liner: I do not. I did not keep it, as a matter of fact. I called back to the office a while ago to see if Tom Byrd kept his copy. And his secretary was there and indicated he was on annual leave, but she did not believe that he kept that. However, Mr. Harris and the Board of Commissioners did see that I had two copies because I told them I wanted to make sure I gave them the correct one.

Max D. Ballinger, Attorney: Now with reference to the no-politicking aspect. You spoke of political pressure groups.

You had... It would have been considered insubordination for Miss Ballinger to have politicked for the position, would it not? Based on what you told her?

Dr. Hugh Liner: I suggested that we suggest that no people...

Max D. Ballinger, Attorney: If you could

just answer it yes or no and explain your answer, I would then no where we're going.

Dr. Hugh Liner: Okay, let me explain my answers with regard to insubordination. We would expect not to go out and develop people in support of them in a basis of raising support. Yes sir.

Max D. Ballinger, Attorney: All right. When you realized that there was a political action group afoot in the county, and that Mr. Irvin Smih and others were members of that group, did you not think it would have been fair to Miss Ballinger to have let her let the people speak out in favor of her?

Dr. Hugh Liner: I'm not sure that I've ever realized that there was a political acting group in favor of a candidate.

Max D. Ballinger, Attorney: If I might direct the Board's attention to page nine of your materials there.

And Dr. Liner, I would direct your attention to page nine also, if I might.

And if you scan the article through... there are 1, 2, 3, 4, 5, 6, 7, 8, 9, 10. Ten paragraphs to it. And the first nine paragraphs, first eight paragraphs are in what you might call in advertising attention, interest, desire, and action - AIDA. The first eight paragraphs are in attention-getters, and create interest, and develop desire, and then the ninth paragraph states what the article wants the people that read this article to do. Would you look at that article?

Dr. Hugh Liner: I've read it.

Max D. Ballinger, Attorney: Now is that. Is that not correct?

Dr. Hugh Liner: I wouldn't, I...

Max D. Ballinger, Attorney: Now let me ask you the whole question and then you can read it with that in mind.

Now in the first eight paragraphs, they set out what's about to be done, and then in the ninth paragraph, he says there

are two things.

There are two things: One -

"Do you want a chairperson who knows the needs of the farmers and is trained in Agriculture, or the one who will delegate authority from the office?"

That is aimed directly at Emily Ballinger, isn't it?

Dr. Hugh Liner: I do not say that, I do not read that.

Max D. Ballinger, Attorney: The second point is: Do you want a qualified livestock agent? So now there are only two things.

The article only concerns two things; the first one that he mentions is a man for County Agriculture Agent. Isn't that right?

Dr. Hugh Liner: No, I do not see that it says chairperson. I have female Agricultural Agents. I have two female livestock agents in this district. So I do not see any reference to male of female there.

Max D. Ballinger, Attorney: You had three

applicants being considered here in this county, did you not?

Dr. Hugh Liner: That's correct.

Max D. Ballinger, Attorney: And of the three applicants, how many were trained in agriculture and how many were trained in Home Economics?

Dr. Hugh Liner: None of them were trained in livestock.

Max D. Ballinger, Attorney: But it says right here, it doesn't say anything about livestock, it says,

> "Do you want a chairperson that knows the needs of farmers and is trained in agriculture."

Doesn't say a word about livestock does it?

Dr. Hugh Liner: That's correct.

Max D. Ballinger, Attorney: Are you ready?

Mr. J. D. Dodson: Yes sir.

Max D. Ballinger, Attorney: Now, so the question doesn't, the point doesn't, raise

the issue of a livestock agent, does it?

> "Do you want a chairperson who knows the needs of the farmers and is trained in Agriculture, or one who will delegate authority from the office?"

That would be in favor of one of the two men applicants and adverse to the woman applicant, wouldn't it?

Dr. Hugh Liner: At this point, I do not know, because at this point when this letter was written...

Max D. Ballinger, Attorney: March 24, 1982.

Dr. Hugh Liner: March 24, I believe, ah, that this person that wrote this didn't know how many people had applied for the position so as far as he knew, there could have been applicants outside of this county. So at this point, I don't know that he knew who was the applicants.

Max D. Ballinger, Attorney: Well, if he knew Russell King, he knew how many applicants there were, didn't he?

Dr. Hugh Liner: Not necessarily. We could have had...

Max D. Ballinger, Attorney: Well, Russell King knew, didn't he?

Dr. Hugh Liner: No sir.

Max D. Ballinger, Attorney: Emily Ballinger knew didn't she?

Dr. Hugh Liner: No sir.

Max D. Ballinger, Attorney: How many applicants there were?

Dr. Hugh Liner: Not at that date.

Max D. Ballinger, Attorney: That was after the interviews, is that right?

Dr. Hugh Liner: Well, I would suggest that when this letter was written, this letter came out on Wednesday the 24th. If he mailed it to the...

Max D. Ballinger, Attorney: Now you don't know whether it was mailed or hand-carried, do you?

Dr. Hugh Liner: I'm not suggesting that, and neither do you, sir.

Max D. Ballinger, Attorney: You are

presuming things, aren't you?

Dr. Hugh Liner: Let's assume that he had mailed it. Or let's assume that he had carried it the day before. It is very unlikely that he knew how many applicants there were.

Max D. Ballinger, Attorney: You knew that Emily was not trained in Agriculture, did you not?

Dr. Hugh Liner: Yes sir.

Max D. Ballinger, Attorney: And you knew the other, the two men were trained in Agriculture, did you not?

Dr. Hugh Liner: I think the question was whether did Mr. Smith know the number of applicants that we had at that point when he wrote this article.

Max D. Ballinger, Attorney: I direct your attention to the first paragraph up there of the article and it says:

"To paraphrase Mark Anthony: I come neither to praise the County Extension Department nor to criticize it."

That's what he says, isn't it?

Dr. Hugh Liner: That's what the art... that's what it says, yes sir.

Max D. Ballinger, Attorney: Are you familiar with that little bit about Mark Anthony from the...

Dr. Hugh Liner: Not enough to comment right here. I'm quite familiar with the Agriculture Extension Service.

Max D. Ballinger, Attorney: I believe Mark Anthony said we have come to bury Caesar, not to praise him. Isn't that what he said.

Dr. Hugh Liner: I'm not sure.

Max D. Ballinger, Attorney: And I believe that when he said we have come to bury Caesar, not to praise him, he then proceeded to praise Caesar and not bury him, not bury the thought of him. Isn't that right?

Dr. Hugh Liner: I have no comment on Mark Anthony. I'm not an expert on that. I'm an economist by trade.

Max D. Ballinger, Attorney: This little phrase right here, he then proceeds to really "do in" Miss Ballinger and to do a good favorable job for Mr. Russell King, is that right?

Dr. Hugh Liner: I don't read it that way,sir.

Max D. Ballinger, Attorney: Now you mentioned a meeting March 11th in Louisburg. How did that come to be held at Louisburg?

Dr. Hugh Liner: I don't know.

Max D. Ballinger, Attorney: It wasn't in Warren County. Is that right?

Dr. Hugh Liner: That's correct.

Max D. Ballinger, Attorney: Was Mr. Russell King there?

Dr. Hugh Liner: No sir.

Max D. Ballinger, Attorney: Do you remember that he was not there?

Dr. Hugh Liner: I do.

Max D. Ballinger, Attorney: How do you remember that he wasn't there?

Dr. Hugh Liner: There were 23 people there, and I think I would have recognized him if he had been there.

Max D. Ballinger, Attorney: Now, was Mr. Irvin Smith there?

Dr. Hugh Liner: Don't know the gentleman.

Max D. Ballinger, Attorney: So you wouldn't know whether he was there or not?

Dr. Hugh Liner: No sir.

Max D. Ballinger, Attorney: But at this March 11, 1982, meeting, you said that the three applicants' names were mentioned at that meeting, weren't they?

Dr. Hugh Liner: That's correct.

Max D. Ballinger, Attorney: So that 23 people knew that there were Agricultural Agents being considered along with the Home Demonstration Club people?

Dr. Hugh Liner: It was not mentioned to them how many other applicants.

Max D. Ballinger, Attorney: Those were the only three mentioned, weren't they?

Dr. Hugh Liner: I think they were the

only three mentioned by those people.

Max D. Ballinger, Attorney: And there was no indication that there was anybody else being considered was it?

Dr. Hugh Liner: We did not go into that.

Max D. Ballinger, Attorney: Now, in your discussion with Dr. Jenkins, did you not say that Irvin Smith was one of the organizers of that meeting and that he had to do with contacting your department about having the meeting, setting it up?

Dr. Hugh Liner: I think I said that he or someone from the Livestock Association. I do not know this gentleman.

Max D. Ballinger, Attorney: You didn't say anything about someone from the Livestock Association. You said Irvin Smith, didn't you?

Dr. Hugh Liner: I do not recall what I said at that point. I assume the record would show.

As I recall, I believe that Dr. Dew indicated that Mr. Black said that Irvin

Smith had called him, yes sir, I believe that's correct.

Max D. Ballinger, Attorney: So when a political pressure group developed in support of Russell King, that political pressure group was responsible for your department recommending two people to the county, wasn't it?

Dr. Hugh Liner: Not sure what political pressure group you're talking about, sir.

Max D. Ballinger, Attorney: Well, I'm talking about the group that met in Lewisville and others, Louisburg, and others that were...

Dr. Hugh Liner: We did not look upon that as a political pressure group.

We looked upon that as a group of concerned livestock producers in this county who felt like that they had not received the proper assistance from the Agriculture Extension Service. And they were stating a concern that if we filled that position, that they would like to

have it filled by a qualified livestock agent. And that is the basis of that meeting. And the purpose of the meeting was to get a livestock agent. And it was not one on the purpose of getting a County Extension Chairman. As I stated, one of these people said, "I don't care if the Chairman is black, white, male, or female; we want a good livestock agent."

Max D. Ballinger, Attorney: Now at that time it was planned how this group would get a livestock agent in the county and that was discussed, wasn't it?

Dr. Hugh Liner: Clarify that question just a little bit, please.

Max D. Ballinger, Attorney: Well, I'll ask you specifically. If they did not fear that if Miss Ballinger were made the County Chairman, that a woman might be employed to do some of the work Miss Ballinger had formerly done and...

Dr. Hugh Liner: I'm sorry, I don't think that the point has ever been made clear

here. I don't understand what you're saying. If Miss Ballinger had been appointed County Extension Chairman, that would not have created a vacancy in Home Economics.

Max D. Ballinger, Attorney: Now, By Mr. Cooper's retirement, there was a vacancy in the Agricultural end of it, was it not?

Dr. Hugh Liner: That's correct.

Max D. Ballinger, Attorney: And what was Mr.Cooper's specialty?

Dr. Hugh Liner: Livestock, Administration, Forestry, CRD.

Max D. Ballinger, Attorney: Well, was there any reason why that there should be an uproar for another qualified livestock agent, or did they not consider Mr. Cooper to be qualified?

Dr. Hugh Liner: They did not consider Mr. Cooper to be qualified for that position.

Max D. Ballinger, Attorney: All right now, so they wanted another livestock, they wanted a livestock agent that was

qualified. Is that true?

Dr. Hugh Liner: That's correct.

Max D. Ballinger, Attorney: And you had not indicated you were ready to fill that position for a livestock agent at that time, had you?

Dr. Hugh Liner: Well, at this particular point and time, we did not know what the situation would be. At the 11th of March the vacancy was still open and we could have gotten applications for County Chairman that we didn't even know who they were at that point. We still was open to get applications for that position at that point. So we didn't know. We may have gotten an application from a livestock-trained person. Could have hired that person, we would not have had a vacancy period. We did not know at that point who these people were.

Max D. Ballinger, Attorney: There had been no indication by the state or by the county or by anyone that Mr. Cooper's

position would be filled with anything but a qualified livestock agent, was it?

I did not single him out, nor Mr. Koonce, or Miss Ballinger.

Max D. Ballinger, Attorney: Do you now recognize that there was some politicking going on with reference to the County Chairmanship?

Dr. Hugh Liner: Apparently, there was some support that arose; however, that does not mean that an individual went out and nurtured that support.

Max D. Ballinger, Attorney: Did you encourage the people that were applying to discourage people coming down to see...

Dr. Hugh Liner: I told each of these people the same thing, that we did not expect them to go out and cultivate support.

Max D. Ballinger, Attorney: And they were expected to see that people didn't come down, is that not true?

Dr. Hugh Liner: No sir. I think that is

two different issues. They were expected not to go out and cultivate this support. No candidate for a position can control the clientele of the people. And if someone feels good about a person or maybe feels bad about a person, they're not under the control of these people, and they have the freedom to do that.

Max D. Ballinger, Attorney: Now, but you told Emily Ballinger to discourage people from coming down to the County Commissioners meeting because you didn't want people appearing one way and other people appearing the other way, and then the decision being made and the group that came down on behalf of Miss Ballinger or Mr. King being disappointed or unhappy. Is that right?

Dr. Hugh Liner: I told Miss Ballinger and Mr. King together that I didn't want them to go out and nurture support and bring a group of people before the Commissioners, because I felt, in the long run, That

would be bad for the Extension Service. We do this in each county.

Max D. Ballinger, Attorney: When this support developed, whether Mr. King did it outwardly or benignly or in some other manner, and you saw it develop, you did not free Miss Ballinger to bring people down to the County Commissioners meeting like Mr. Smith had admonished the farmers to come, did you?

Dr. Hugh Liner: I did not see support developing.

I got a copy of this letter, but I do not see that as a political pressure group developing. I see it as an individual writing a letter to the editor which we all have the privilege of doing, and each letter that and each newspaper that we see every day has a dozen of them in there. One person was stating his opinion.

Max D. Ballinger, Attorney: Did you not recommend just one person?

Dr. Paul E. Dew: I think that's on the

record already.

Max D. Ballinger, Attorney: Just answer yes or no, if you would.

Dr. Paul E. Dew: Yes.

Max D. Ballinger, Attorney: You only recommended one person and that was Mr. L. C. Cooper. Is that right?

Dr. Paul E. Dew: That's right.

Max D. Ballinger, Attorney: Did you or Dr. Liner in your presence advise Mr. Russell King that the efforts of Mr. Irvin Smith and Mr. Jim Harris in publicizing their political action, for reference the County Chairmanship, that that might hurt Mr. Kings chances of getting to be County Chairman?

Dr. Paul E. Dew: It has not come to my attention that anyone has acted on behalf of Mr. King. To this point. In any regard.

Max D. Ballinger, Attorney: But you don't know whether they did or did not, do you?

Dr. Hugh Liner: I only know what we've

seen here .

(Conclusion of Dr. Paul Dew's Testimony)

Max D. Ballinger, Attorney: I have no other questions. I would like to ask one question of DR. Liner if I could. I only have one question.

Mr. J. D. Dodson: Can we do that when we come back?

Dr. Clauston Jenkins: No, we can't, go ahead and ask it now, and then we will have closing. Right.

Dr. Hugh Liner Testified
in Response to Questions by
Max D. Ballinger, Attorney

Max D. Ballinger, Attorney: Dr. Liner, do you have a brother here in the county?

Dr. Hugh Liner: Yes, I do.

Max D. Ballinger, Attorney: And did he speak with you about who would be the County Chairman?

Dr. Hugh Liner: He, I think, asked me who was the person in this county going to be?

Max D. Ballinger, Attorney: I ask you if his words were not,

> "Who's going to be the County Chairman, Russell King or that woman?"

Are those not his words?

Dr. Hugh Liner: To my knowledge, that's certainly not what he said.

Max D. Ballinger, Attorney: What did he say? Do you remember?

Dr. Hugh Liner: I don't recall other than him asking who was going to be County Chairman.

Max D. Ballinger, Attorney: All right.

Dr. Hugh Liner: I would like to carry this just a little further if I may. I don't think that my brother would have made the comment like you alleged that he would have made.

Max D. Ballinger, Attorney: Did you tell him..whether the man or the woman would be?

Dr. Hugh Liner: I told him I did not know. I did not know until the Commissioners voted unanimously to select

Russell King.

Max D. Ballinger, Attorney: I have no other questions.

(Conclusion of Dr. Hugh Liner's Testimony)

Mr. J. D. Dodson: Let's try to be back at five

Dr. Clauston Jenkins Addressed the Panel

Dr. Clauston Jenkins: Members of the panel, we have sat in here the better part of a day hearing a case that is very important to the individuals involved and to the Extension Service, but one which has arisen in my view from a complete misunderstanding of what went on.

I think that you have been able to see by the testimony that what Miss Ballinger thinks went on is a nefarious plot didn't really go on at all.

That every instance of what happened can be explained as consistent with the Extension Service procedure and was fair

to her.

The end result of the Extension Services action in this matter was

AFFIDAVIT OF EMILY R. BALLINGER REFERENCE TRANSCRIPT OF GRIEVANCE HEARING TESTIMONY

Filed District Court April 30, 1985

Emily Ballinger, being first duly sworn, deposes and says that she prepared the foregoing transcript of the tape recordings of the Grievance Hearing held in her cause on September 9, 1982, by the Extension Service. The foregoing transcription, contained in two volumes, is a true and accurate transcription of that which was on the tape recordings, and the transcription is consistent with her recollection of the events and testimony at the grievance hearing.

This the 30th day of April, 1985.

s/EMILY R. BALLINGER

Duly verified.

ATTACHMENT A

GRIEVANCE PROCEDURES OF EXTENSION SERVICE

Filed District Court April 30, 1985

April 15, 1977

TO: All employees of the N. C. Agricultural Extension Service

FROM: George Hyatt, Jr., Associate Dean and Director

SUBJECT: Grievance Procedures for the North Carolina Agricultural Extension Service

Effective immediately, the enclosed Grievance Procedures shall become part of administrative policy for the North Carolina Agricultural Extension Service. All employees are urged to file this statement where it can be readily located. Any questions about this policy should be directed to Mr. D. G. Harwood, Jr., Assistant Director, who has been appointed Grievance Coordinator. Note the attached Formal Grievance Filing Form and the Informal Complaint Memorandum Form.

County Extension Chairmen should at the next regularly scheduled staff conference (but before June 1, 1977) conduct an election to determine which non-administrative full-time Extension staff member in that county will become a member of the hearing board pool. (Secretaries and paraprofessionals are eligible to be elected; EFNEP aides are not eligible since they are not full time, and County Extension Chairmen are not eligible because they have administrative functions.) The name of this staff member is to be transmitted to Mr. Harwood in writing by June 1, 1977.

Whereas the North Carolina Agricultural Extension Service does not at present have a formal, complete Affirmative Action Program, it is the policy of Administration to assure equal opportunity for all employees without regard to race, age, sex, handicap, color, national origin, or religion to the full

extent of the law. In the past, employees have sought redress for their grievances only through established supervisory and administrative channels or through other remedies available under the law.

The new policy provides for both informal and formal resolution of grievances. Informal procedure allows a complaint to be filed with supervisors at any level, or directly with the Grievance Coordinator. Formal procedure includes a hearing process with a review of the complaint by an employee's peers. The policy is intended to elicit reliable evidence, narrowed to the issues involved, without calling on formal judicial rules and procedures.

The director's office welcomes suggestions for improvement of this policy at any time.

cc: Chancellor Joab Thomas
Chancellor L. C. Dowdy
Dr. C. L. Jenkins

Dr. L. M. Clark
Dean J. E. Legates
Dean B. C. Webb
Dr. Curt DeVille

GRIEVANCE PROCEDURES FOR THE NORTH CAROLINA AGRICULTURAL EXTENSION SERVICE

EQUAL EMPLOYMENT OPPORTUNITY

100. PURPOSE, APPLICABILITY AND COVERAGE

A. Purpose - These grievance procedures for the North Carolina Agricultural Extension Service establish policies and procedures in employment and personnel management providing for an adequate and fair hearing of grievances for each individual without regard to race, color, age, national origin, handicap, sex, or religion, where the grievance is based upon denial of equal employment opportunity or discrimination.

These procedures relate to all phases of employment for all employees (professional and non-professional) of the North Carolina Agricultural Extension Service regarding all staff positions

regardless of budgetary sources.

B. Applicability - This program applies to the North Carolina Agricultural Extension Service at North Carolina State University, at North Carolina A&T State University, and throughout the state.

C. Coverage - This program applies to all positions in all units of the North Carolina Agricultural Extension Service and to employees provided by county and other political subdivisions in support of Agricultural Extension Service programs. 1/

Employees of the North Carolina Agricultural Extension Service with academic rank are subject to procedures included in the Faculty Handbook. >)

200. ADMINISTRATION

A. Designation of Responsibility - The Director of the North Carolina Agricultural Extension Service has assigned to the Assistant Director who has staff responsibilities for civil rights the duty of coordinating all activities relating to grievance procedures for the North Carolina Agricultural Extension Service. This individual is termed the Grievance Coordinator and shall:

1. Coordinate a system for (a) counseling an aggrieved employee who believes he has been discriminated against, and (b) attempting to resolve informally the matter raised by the aggrieved person.

2. Arrange for the receipt and investigation of individual complaints of discrimination.

3. Arrange for the receipt and investigation of general allegations by organizations or other third parties of

discrimination which are necessary on individual complaints, including any disciplinary action that is warranted when an employee has been found to have engaged in a discriminatory practice.

4. Review the file on any individual complaint, before a decision is made under the complaint procedure, and make any recommendations to the Director that he considers desirable, including any disciplinary action that is warranted by the circumstances.

300. PROTECTION OF COMPLAINANTS, EMPLOYEES, WITNESSES, AND REPRESENTATIVES FROM INTERFERENCE, HARASSMENT, INTIMIDATION AND REPRISAL

All employees shall be free from any or all restraint, interference, coercion, or reprisal on the part of their associates or supervisors in making any complaint or appeal, in serving as representatives of an appellant, in appearing as witnesses, or in seeking

information in accordance with these procedures. The above principles apply with equal force after a complaint has been resolved. Should these principles be violated, the facts shall be brought to the attention of the Grievance Coordinator by the appellant, his representative or the person affected so that appropriate remedial action may be taken.

400. PROCEDURE FOR INFORMAL RESOLUTION OF COMPLAINTS

The Grievance Coordinator is designated to act in an effort to mediate or conciliate informal complaints. However, initially, employees should attempt to resolve informal complaints at the lowest possible supervisory level. Informal complaints may be filed by anyone eligible to file a formal complaint.

If the grievance is not resolved at the lowest level, the grievant may proceed to the next supervisory level and this procedure may be repeated until the

complaint reaches the Grievance Coordinator. Any informal complaint not resolved to the employee's satisfaction by the Coordinator must thereafter be handled through the formal complaint procedures.

When an informal complaint has been received by an immediate supervisor, a memorandum shall be prepared by the supervisor to the Grievance Coordinator. The memorandum should advise him of the complaint, outline the circumstances of the complaint, discuss attempts to resolve the complaint, cite the recommendations of the supervisor, and state the conclusion or recommendation for further action.

All informal complaints will be heard by the immediate supervisor as rapidly as possible and in no more than 30 calendar days after receiving the complaint. If no satisfactory solution can be found for the complainant by the supervisor, the complainant may proceed to the next higher supervisory level.

In any case where the complainant feels that he cannot present his complaint, or would not receive proper consideration of his complaint at the immediate supervisory level, he may, without prejudice, move up the supervisory channel to any higher level or he may take the complaint directly to the Grievance Coordinator.

500. FORMAL COMPLAINT PROCEDURE

This procedure for processing of formal complaints of employment discrimination by the North Carolina Agricultural Extension Service is as follows:

If the informal procedures do not attain a result satisfactory to the complainant or if the complainant has a suitable reason not to follow the informal procedure, he may file a formal complaint, to be submitted in writing and signed. The formal complaint should state concisely the basis for the complaint and

indicate whether the alleged discrimination was based on age, race, color, handicap, national origin, sex or religion. A statement from the complainant describing the conduct complained of with greater particularity may be required as the investigation proceeds.

A. Who May File - A complaint may be filed by any employee of the North Carolina Agricultural Extension Service who believes that discrimination in employment practice in the Extension Service has resulted or will result in discrimination in employment against him. A complaint of general discriminatory employment practices may also be filed by an employee, provided, however, that upon request of the Director, the complainant shall furnish names of individuals who are adversely affected by those practices.

B. Right of Representation - A complainant may designate in writing an

individual or an organization to represent him in the processing of his complaint and is entitled to the advice of counsel at his cost at all stages in the proceeding. If the representative designated by the complainant is an employee of the U. S. Department of Agriculture or of the North Carolina Agricultural Extension Service, such employee, as well as an employee-complainant, shall have a reasonable amount of official time with pay, if he is in pay status, for the purpose of appearing at any hearing on the complaint. The rights and privileges set forth in this paragraph shall also be available to any person whose alleged conduct is the cause of the complaint.

C. Where Filed - All employees who wish for their complaint to be handled under the formal Grievance Procedure of the North Carolina Agricultural Extension Service should file their complaint in writing with the Grievance Coordinator.

Those employees subject to N. C. State University faculty policy and regulations as set forth in the Faculty Handbook (Section VI, Faculty Rights and Responsibilities) must use those policies and should file according to the procedures described therein.

The Grievance Coordinator will investigate the complaint and will act on the case as rapidly as possible and advise the complainant of his decision within 45 calendar days after receiving the complaint. If, upon the Coordinator's decision, the complainant is dissatisfied, he may file with the Director a request for a hearing. Upon receiving the request for a hearing, the Director shall instruct the Grievance Coordinator to convene a hearing as set forth below.

D. When Filed - A complaint shall be submitted within 90 calendar days of the conduct giving rise to the complaint. The Director may extend the time limit for

good cause.

E. Hearing - A complainant filing a formal complaint or the Director may request a hearing which shall be transcribed or recorded. The hearing shall be conducted within 60 calendar days from the date the hearing is requested, during regular working hours in the county where the alleged discrimination occurred, or at a time and place agreed to by the Grievance Coordinator and the complainant. The Grievance Coordinator, the complainant and any person whose alleged conduct is the cause of the complaint shall have the right to call and cross-examine witnesses and offer other evidence. The hearing shall be instituted by the Director and conducted by the Coordinator. Attendance at the hearing shall be at the invitation of the Coordinator, in consultation with the complainant. The Coordinator shall submit to the Director a proposed decision within 30 calendar days of the hearing.

F. Hearing Board - The hearing will be before a hearing board, chaired by the Coordinator.

There shall be established a hearing board pool for each Extension District. The hearing board pools shall consist of one member elected by each county staff within the district from non-administrative full-time Extension employees, and five members appointed by the Director in consultation with Assistant Directors of Extension (with the Director attempting to reflect age, race, handicaps, sex, color, national origin, and religious differences in composition of the pools).

The hearing board will consist of the Grievance Coordinator and four members, with four alternates, randomly selected by the Grievance Coordinator from the pool for the district from which the complaint arises. A vice chairman will be appointed by the Grievance Coordinator. The

complainant shall have the right to reject any randomly drawn member of the pool to the extent allowed by the total membership of the pool. An individual member of the hearing board shall disqualify himself when he has a conflicting interest in the situation leading to the complaint.

The hearing board will in the process of hearing the complaint determine, based upon the facts presented:

1. Whether there exists sufficient justification for the complaint to proceed to a formal hearing.

2. Whether there exists, at any time during the hearing, sufficient justification to proceed through to completion of the hearing.

3. A decision in the matter of the complaint with respect to a recommended solution, disposition or action.

In order to help insure that institutional time is not expended needlessly on insubstantial or

unsupportable contentions, the hearing board must establish that "probable cause" exists to believe impermissible discrimination occurred; establish a "prima facie" case of that occurrence, which is grounded in proven fact; and find that the balance of evidence concerning the occurrence remains convincing even when refutation is offered.

After the conclusion of the hearing, the hearing board will prepare a report for the Grievance Coordinator to submit to the Director.

G. Action by the Director - Upon receiving the report of the hearing board, the Director will review the entire file on the complaint, including the transcript of the hearing, if a hearing was held. He shall approve the proposed decision, or remand to the Grievance Coordinator for further action specified by the Director, or otherwise dispose of it within 30 calendar days of its submission to him,

and notify the complainant, in writing, of the decision or disposition of the complaint.

600. APPEAL PROCEDURES

Within 30 calendar days of notification of the disposition of the complaint by the Director, or within 30 calendar days of any refusal of the Director to accept a complaint or to act on a complaint in accordance with the program, the complainant may request a review by the Chancellor. Any request shall be in writing. The Director, upon request by the Chancellor, shall furnish to the Chancellor the complete file, including the transcript of any hearing together with whatever other information the Chancellor requests. The Chancellor will review the file on the record to determine if there is substantial evidence on the record as a whole to support the decision of the Director. The decision of the Chancellor shall be in writing and

shall be sent to the Director for appropriate action within 60 calendar days of receipt of the complaint. A copy of the Chancellor's decision shall also be furnished the complainant.

700. FURTHER APPEAL

Pursuant to Section 501.C (4) of The Code of the University of North Carolina, employees may appeal a grievance to the President and the Board of Governors. Appeals to this level are transmitted through the Chancellor.

800. REPORTS

Within one year of the effective date of this policy and annually thereafter, the Director will prepare a report summarizing implementation and operation of the policy.

900. MAINTENANCE OF RECORDS

All documentation, records and reports will be retained for a minimum of two years. These records will be subject to review by the grievant, the Director,

the Chancellor, and the President of the University or his designee.

RESUME EMILY R. BALLINGER

Filed District Court April 30, 1985

EMILY R. BALLINGER
Home Economics Extension Agent
Box 663
Warrenton, North Carolina 27589

Telephone: (919) 257-3284 Home
(919) 257-3640 Office

PERSONAL DATA:

Date of Birth:	December 3, 1926
Height:	5'9"
Weight	160
Marital Status:	Single
Health:	Excellent

EDUCATION:

Bachelor of Science - Home Economics (Teacher Training) May 1948, Womans College of the University of North Carolina, Greensboro, N. C. (Now UNC-G)

Master of Education May 1971, North Carolina State University, Raleigh, N. C.

Additional Course Work - 1973 and

1978, North Carolina State University, Raleigh, N.C.

EMPLOYMENT RECORD:

Home Economics Extension Agent, Warren County, Warrenton, North Carolina September 1, 1951 - present.

Areas of responsibility: Clothing; Family Resource Management; Foods and Nutrition and Liaison Agent for Extension Homemaker program.

Supervise four EFNEP Aides and have been responsible for this program since it was started in Warren County in 1969.

Throughout the years in Warren County, I have worked closely with the Extension Homemaker Program. I helped organize Community Development Clubs in the county and worked very closely with that program for a few years. Until about four years ago, I was assigned to spend one-fourth of my time with the 4-H program. Since then, I have continued to work with the youth program in my areas of responsibility.

Assistant Home Demonstration Agent, Forsyth County, Winston-Salem, North Carolina, September 1, 1948 - August 31, 1951. Worked with 4-H club and Home Demonstration Club Program. Helped in starting one of the first long range planning programs in the state - "Forsyth Faces The Future" 1950-51.

Dietitian at Roanoke Island Camp Inc. (4-H Camp) Manteo, North Carolina, June - August 1948.

Home Demonstration Trainee Agent, Caswell County, Yanceyville, N. C. June 1 - August 15, 1947.

Typesetter, Ruzicka Bookbinders, Greensboro, North Carolina May 1943 - September 1944, summer and Christmas holiday work; three years.

PROFESSIONAL ACTIVITIES:

- National Association of Extension Home Economists Distinguished Service Committee 1978.

- Attended 15 National meetings

North Carolina Association of

Extension Home Economists

- Treasurer 1970
- President Elect 1974
- President 1975
- Counselor 1976
- Attended 32 State meetings

District Association of

Extension Home Economists

- Vice Chairman 1957
- Chairman 1958
- Treasurer 1969

North Carolina Federation of

Cooperative Extension Associations

- Executive Board 1975
- Treasurer 1980

American Home Economics Association

North Carolina Home Economics Association

- Program of Work Committee 1976
- Membership Committee 1978-79

Epsilon Sigma Phi

- analyst 1966

Phi Kappa Phi

North Carolina Adult Education Association

RELIGIOUS AND CIVIC ACTIVITIES:

Member First Lutheran Church

Member Farm Bureau

Member N. C. State 4-H Honor Club

- Secretary 1950

- President 1962

Have served on committees and boards of the following:

T. B. and Health Association;

American Cancer Society; Heart Association;

Society for Crippled Children;

American Red Cross; and

Hospital Auxiliary

HONORS:

National Home Demonstration Agents Association Distinguished Service Recognition, 1960

Extension News "We Salute"

Who's Who in America, 1976

Invited to attend President's White House

Conference in Knoxville, Tennessee, 1975

ADDITIONAL INFORMATION:

4-H Club Member - 6 years

State 4-H Dress Revue Winner - 1944

Academic Training

Prior To Starting Master's Degree Program

1954

Ag. Ext. 301	Extension Teaching Methods	
Hort. Ext. 342	Landscape Gardening	
Ag. Ext. 302	Information Media	
H. Ec. 586	Furnishings for Contemporary Living	

Academic Training For Master's Degree

ED 503	Extension Program Development	
3 Credit hours		Grade A
ED 403	Family Economics	
3 Credit hours		Grade A
ED 600	Theory of Organization and Administration of Adult Education I	
3 Credit hours		Grade A

ED 601 Theory of Organization and Administration of Adult Education II

3 Credit hours Grade A

ED 596 Top Problems in Adult Education

3 Credit hours Grade A

Soc. 590 Applied Research

3 Credit hours Grade A

Soc. 502 Society, Culture and Personality

3 Credit hours Grade A

Soc. 501 Leadership

3 Credit hours Grade A

ED 699 Research

3 Credit hours Grade S

ED 699 Research

3 Credit hours Grade S

ED 596 Top Problems in Adult Education

3 Credit hours Grade S

Master of Education, May 1971

Academic Training Beyond Master's Degree:

ED 559 Learning Concepts and Theories Applied to Adult and Community College Education

3 Credit hours Grade A

ED 538 Instructional Strategies in Adult and Community College Education

3 Credit hours Grade CS

REFERENCES:

Dr. E. J. Boone
Assistant Director, Staff Development
117 Ricks Hall
N. C. State University
Raleigh, North Carolina 27650

Mrs. Ada Dalla Pozza
State Agent, Home Economics
103 Ricks Hall
N. C. State University
Raleigh, North Carolina 27650

Mr. L. B. Hardage
Route 1, Box 164
Palmer Spring, Virginia 23957

Mrs. James C. Harris
Route 3, Box 107
Warrenton, North Carolina 27589

Mr. C. P. Pope
Route 2, Box 268
Macon, North Carolina 27551

AFFIDAVIT OF EMILY R. BALLINGER

Filed District Court April 30, 1985

EMILY R. BALLINGER, being first duly sworn, deposes and says:

1. I am the plaintiff in this lawsuit. I have worked for the Agricultural Extension Service in North Carolina for over 33 years. I am generally aware of the practices and procedures of the Extension Service. I know of my own knowledge that prior to the early 1970's it was the practice of the Extension Service to appoint the senior white male Extension agent in a county to the position of county chairman, or its equivalent, when vacancies occurred.

2. In the memorandum which is being filed by my attorney in response to the defendants' motions for summary judgment, there are references to and allegations concerning my experience and work in Warren County as contrasted with that of Mr. King. As to all such references and

allegations, I know them to be the truth and based upon my own personal knowledge of my supervisory responsibilities, the leadership I have demonstrated, and my success in providing meaningful programs to all citizens of the county without regard to race, sex, creed, or color.

3. There have been allegations raised during these proceedings of statements attributed to Bertha Forte (black) and Edith Clark (white) about my abilities to get along with people, and to provide meaningful programs to all citizens, particularly blacks. I am at a loss to explain why Mrs. Forte would have said such. She and I worked together for years in Extension, and I always felt we got along well. As for Mrs. Clark, she worked under my direction and supervision for 14 years. Near the end of our association, it was necessary for me to reprimand Mrs. Clark for her performance, and she expressed resentment for my

correcting her. Particularly, I know that Doctor Liner was aware of this fact.

4. I have appended hereto as attachment A, a copy of the Grievance Procedures established by the Extension Service.

5. The remaining attachments relate to my work in the Expanded Foods and Nutrition Education Program and are indicative of the fact that my work performance was not found lacking, notwithstanding the allegations of the defendants which have surfaced in this proceeding.

This is the 30th day of April, 1985

s/EMILY R. BALLINGER

Duly verified

SETTLEMENT AGREEMENT AND GENERAL RELEASE

(Filed in Court of Appeals as part of Appendix)

STATE OF NORTH CAROLINA

COUNTY OF WARREN

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE is made and entered into by and between Emily Ruth Ballinger ("Plaintiff") and Warren County, the Warren County Board of Commissioners, W. J. Harris, Clyde R. Edwards, William T. Skinner, III, Herbert C. Harris, George E. Shearin, Sr. and Glenwood Newsome ("County defendants").

WITNESSETH:

WHEREAS, the Plaintiff has filed two (2) Charges of Discrimination against the County defendants (Charge Nos. 018820850, dated October 14, 1982 and 018830358, filed March 11, 1983); and

WHEREAS, the Plaintiff filed a Complaint against, inter alia , the County defendants on March 8, 1984 in the United States District Court for the Eastern District of North Carolina (Civil Action No. 84-193-CIV-5) (the "lawsuit"); and

WHEREAS, the Plaintiff and the County defendants desire to settle fully and

finally all differences between them relating to or arising from the claims and assertions made in Plaintiff's two (2) Charges of Discrimination and the Plaintiff's lawsuit;

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained and the monies to be paid to the Plaintiff, it is agreed as follows:

1. Payment. Upon the full and final execution of this Settlement Agreement by all parties hereto, and the satisfaction of the conditions set forth in Paragraph 2, infra, the defendant Warren County will pay the Plaintiff the sum of Thirty-Five Thousand Dollars ($35,000.00) compensatory damages (not back pay or other pay). This payment of Thirty-Five Thousand Dollars ($35,000.00) is accepted by the Plaintiff and her attorney, Max D. Ballinger, in full and final satisfaction of and in release and discharge of any claims for damages (of any nature whatsoever), costs

and attorney's fees against the County defendants which the Plaintiff and her attorney might now have.

2. Dismissal of Lawsuit and Withdrawal of EEOC Charge. Upon the execution of this Agreement by all parties hereto, the Plaintiff and the County defendants, through their respective legal counsel, shall file a Stipulation of Dismissal with prejudice as to the lawsuit. A copy of the Stipulation of Dismissal with prejudice to be filed is attached hereto as Exhibit A.

Also, upon the execution of this Agreement by all parties hereto, the Plaintiff shall withdraw (as to the County defendants), the EEOC Charge of Discrimination (Charge No. 018830358) which remains pending. Plaintiff shall provide counsel for the County defendants with a copy of a letter from the EEOC acknowledging the withdrawal of the Plaintiff's pending EEOC Charge of

Discrimination as to said County defendants.

The parties agree that the dismissal of the Plaintiff's lawsuit and the withdrawal of the pending EEOC Charge (Charge No. 018830358) are conditions precedent to the enforceability of the remaining provisions of this Settlement Agreement and General Release.

3. Reservation of Rights by Plaintiff. All parties hereto acknowledge and agree that this Settlement Agreement And General Release is not intended to affect any rights which the Plaintiff may have to pursue an appeal of the May 22, 1986 United States District Court's dismissal of her claims against North Carolina State University, the North Carolina Agricultural Extension Service, Hugh L. Liner, Chester D. Black, Paul E. Dew, Russell C. King andd Bruce R. Poulton.

4. General Release. For and in

consideration of the payment of the sums required hereunder, the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Plaintiff does hereby irrevocably and unconditionally release, remise, acquit and discharge Warren County, the Warren County Board of Commissioners and also W. J. Harris, Clyde R. Edwards, William T. Skinner, III, Herbert C. Harris, George E. Shearin, Sr. and Glenwood Newsome (each individually and in their official capacities), as well as the successors (elected or otherwise), assigns and representatives of such persons, associations or entities, jointly and individually, of and from any and all claims, demands, causes of action, damages, costs, attorney's fees or liabilities, whether known or unknown, arising from the allegations of unlawful employment discrimination which were

contained or could have been contained in the plaintiff's EEOC Charges of Discrimination or arising from the allegations against the County defendants which are asserted or could have been asserted in the lawsuit filed against the County defendants by the plaintiff in the United States District Court for the Eastern District of North Carolina (Civil Action No. 84-193-CIV-5).

5. Future Vacancy in Chairmanship Position. If the Warren County Extension Chairman's position should become vacant in the future and if the Plaintiff should apply for such position and be the sole nominee recommended to the Warren County Board of Commissioners by the North Carolina Agricultural Extension Service, then the Warren County Board of Commissioners agrees to accept such recommendation that Plaintiff be the County Extension Chairman.

If the Warren County Extension

Chairman's position should become vacant in the future and if the Plaintiff should apply for such position and be recommended by the North Carolina Agricultural Extension Service along with another person or other persons for the position, then, under such circumstances, the Warren County Board of Commissioners agrees to select the County Extension Chairman without regard to the race, sex, national origin, age or religion of the nominees.

6. No Admission of Liability. The Plaintiff understands and agrees that the consideration recited herein is to be paid by the County and accepted by the Plaintiff in full and complete settlement and compromise of disputed claims, the validity of which are denied by the County defendants and that the payment of such consideration is not considered an admission of liability by any of the County defendants.

7. Severability. The provisions of

this Agreement are severable, and if any part of the Agreement is found to be unenforceable, the other paragraphs shall remain fully valid and enforceable.

8. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the assigns, heirs, executors and administrators of the Plaintiff and the predecessors, successors (elected or otherwise), and assigns of the County defendants.

9. Entire Agreement. This Settlement Agreement and General Release sets forth the entire agreement between the parties hereto, and fully supersedes any and all prior agreements or understandings between the parties hereto pertaining to the subject matter hereof.

This 8th day of September, 1986

s/Emily Ruth Ballinger

s/Max D. Ballinger
Attorney for Plaintiff

s/Eva M. Clayton, Chairperson
of Warren County Board of

Commissioners

Warren County Board of Commissioners

s/Eva M. Clayton, Chairperson
of Warren County Board of
Commissioners

s/W. J. Harris

s/Clyde R. Edwards

s/William T. Skinner, III

s/Herbert C. Harris

s/George E. Shearin, Sr.

s/Glenwood Newsome

s/Charles T. Johnson, Jr.
Attorney for County defendants

s/Cecil W. Harrison, Jr.
Attorney for County defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

Civil Action No. 84-193-CIV-5

EMILY RUTH BALLINGER,

Plaintiff

vs.

WARREN COUNTY; BOARD OF WARREN COUNTY COMMISSIONERS; W. J. HARRIS, Individually and as Warren County Commissioner; CLYDE R. EDWARDS, Individually and as Warren County Commissioner; WILLIAM T. SKINNER, III, Individually and as Warren County Commissioner; HERBERT C. HARRIS, Individually and as Warren County Commissioner; GEORGE E. SHEARIN, SR., Individually and as Warren County Commissioner; and GLENWOOD NEWSOME, Individually and as Warren County Manager, as Agent of the Board of Warren County Commissioners and as Agent of Warren County,

Defendants

STIPULATION OF DISMISSAL
(With Prejudice)

NOW COME Max D. Ballinger, as attorney for Plaintiff, and Charles T. Johnson, Jr. and Cecil W. Harrison, Jr.,

as attorneys for the Defendants, and stipulate and agree to a dismissal with prejudice of the Complaint filed herein against the defendants Warren County; the Board of Warren County Commissioners; W. J. Harris, Individually and as Warren County Commissioner; Clyde R. Edwards, Individually and as Warren County Commissioner; Herbert C. Harris, Individually and as Warren County Commissioner; William T. Skinner, III, Individually and as Warren County Commissioner; George E. Shearin, Sr., Individually and as Warren County Commissioner; and Glenwood Newsome, Individually and as Warren County Manager, as Agent of the Board of Warren County Commissioners and as Agent of Warren County.

Each party shall bear its own costs.

This 8th day of September, 1986.

STIPULATED AND AGREED TO:

s/Emily Ruth Ballinger

s/Max D. Ballinger
Attorney for the Plaintiff
Post Office Box 8104
Greensboro, North Carolina 27419-8104
Telephone: (919) 294-3387

s/Charles T. Johnson
Post Office Box 646
Warrenton, North Carolina 27589
Telephone: (919) 257-3748

POYNER & SPRUILL
s/Cecil W. Harrison, Jr.
Post Office Box 10096
Raleigh, North Carolina 27605-0096
Telephone: (919) 783-6400

Attorneys for Defendants

42 USC 1985

Section 1985. CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS

Preventing officer from performing duties

(1) If two or more persons in any State or Territory conspire to prevent, by force , intimiuation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from

discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Obstructing justice; intimidating party witness, or juror

(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of having so

attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving,

either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be

done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen or the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

R. S. section 1980